(25,875)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 1045.

CENTRAL OF GEORGIA RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM A. WRIGHT, COMPTROLLER GENERAL OF THE STATE OF GEORGIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 4, 1917.

a Be it remembered, that on January 28th, 1916, at the January term, 1916 of Fulton Superior Court, there came on to be tried a certain case therein pending between the Central of Georgia Railway Company, petitioner, and William A. Wright as Comptroller General of the State of Georgia, defendant, the same being a bill to enjoin the collection of tax executions. his Honor, W. D. Ellis, Judge of said court presiding.

A demurrer having been filed to the petition, and an answer made subject thereto, and an amendment of the answer having been allowed on said January 28, 1916, the parties to said case agreed upon such facts as appeared to be in any dispute under the pleadings, and the case was submitted to the Judge without a jury, upon the pleadings and said stipulation of facts, the latter being filed as a part of the record in the case, and no issue of fact being involved.

After argument, the court made a judgment and decree, overruling the demurrer on every ground, and decreeing that the enforcement of the executions for taxes described in the bill should be perpetually enjoined, and that the defendant and his successors in office be perpetually enjoined from issuing other executions or enforcing the demands for taxes for 1914 and pre-ious years as complained against in the petition. Said decree is of file as a part of the record in the case.

To so much of said judgment and decree as overrules his demurrer in said case to the bill filed, the defendant excepts, and specially assigns the same as error, because said demurrer should have been sustained upon each and every ground thereof, said grounds of demurrer being good in law.

To so much of said decree as enjoins the execution for taxes mentioned in said bill due the State of Georgia, defendent excepts, and specially assigns the same as error, because said executions under the facts appear to have been regularly and legally issued to enforce taxes properly assessed and due by the petitioner to the State of Georgia, and the court erred as a matter of law in adjudging otherwise.

b To so much of said decree as enjoins the enforcement of the executions for county taxes, and municipal and school taxes, as mentioned in the bill, defendant excepts, and specially assigns the same as error, because said tax executions were each and all under the agreed facts and pleadings, regularly and lawfully issued to enforce taxes properly assessed and due to said respective counties, municipalities and school districts, and the court erred as a matter of law in adjudging otherwise.

To so much of said decree as perpetually enjoined the defendant and his successors in office from issuing other executions, or seeking to enforce in any way taxes due the state upon the interest of the petitioner in the Augusta & Savannah and Southwestern Railroad

for the year 1914 and previous years, as complained against in the petition, defendant excepts, and specially assigns the same as error, because under the pleadings and the facts agreed, petitioner owned in said years a valuable and a taxable interest in said railroads, on which it is due ad valorem taxes which have never been paid, and if for any cause the present executions are unenforceable, defendant should be allowed to proceed further and otherwise to collect said taxes, and the court erred as a matter of law in adjudging otherwise.

To so much of said decree as perpetually enjoins the defendant and his successors in office from issuing other executions or seeking to enforce in any way taxes claimed to be due the several counties and municipalities and school districts through which the Southwestern Railroad and the Augusta and Savannah Railroad run, upon the interest of petitioner in said railroads, for the year 1914 and previous years, as complained against in the petition, defendant excepts, and specially assigns the same as error, because under the pleadings and agreed facts petitioner has a valuable and taxable interest in said railroads, in respect of which taxes for said years are due ad valorem to said counties, municipalities and school districts, which have not been paid; and should said execution be for any reason deficient, defendant should be free to proceed further and otherwise to collect said taxes; and the court erred as a matter of law in adjudging otherwise.

c To said entire decree enjoining defendant from collecting ad valorem taxes from petitioner for the year 1914 and previous years, as complained against in said bill, in respect of its interest in Augusta and Savannah Railroad, and the Southwestern Railroad, defendant excepts, and specially assigns the same as error, because it appears from the undisputed facts in the record that petitioner has a valuable and taxable interest in said railroads, as set forth in his answer in said case, on which ad valorem taxes are legally due; and because it appears that petitioner has no exemption from the payment of such taxes, and is by its charter incapable of claiming such exemption, and the constitution and laws of this state prohibited the existence of any such exemption from ad valorem taxation in 1895 at the time petitioner acquired the interests in said roads now sought to be taxed; and the court erred as a matter of law in adjudging to the contrary.

No evidence was introduced, and none is material to a consideration of the errors complained of.

Defendant specifies as portions of the record material to a consideration of the errors complained of the following:

1. The original petition and exhibits thereto. 2. The demurrer thereto. 3. The original answer thereto. 4. The amendment of the answer allowed Jan. 28, 1916. 5. The stipulation of facts and agreement to try the case on the pleadings and on said facts agreed. 6. The decree of the court overruling the demurrer and granting a perpetual injunction.

And now within the time allowed by law comes said William A.

Wright as Comptroller General as aforesaid, and presents this his bill of exceptions, and prays that the same may be signed and certified.

JOHN C. HART,
Atlanta, Ga.;
SAMUEL H. SIBLEY,
Union Point, Ga.;
Attorneys for William A. Wright, as Comptroller General.

d *Certificate of the Judge.*

I do certify that the foregoing bill of exceptions is true and specifies all the evidence, and specifies all of the record material to a clear understanding of the errors complained of; and the Clerk of the Superior Court of Fulton County is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified, and certify the same as such, and cause the same to be transmitted to the March term of the Supreme Court, that the errors alleged to have been committed may be considered and corrected.

This January, 1916.

W. D. ELLIS,
Judge S. C. A. C.

(Endorsed:) Due and legal service of the within bill of exceptions acknowledged, copy received, all other service waived.

This 1st day of February, 1916.

LAWTON & CUNNINGHAM,
LITTLE, POWELL, SMITH & GOLDSTEIN,
Att'ys for Defendant in Error.

GEORGIA,
Fulton County:

I hereby certify, that the foregoing Bill of Exceptions, hereupto attached, is the true original Bill of Exceptions in the case stated, to-wit: William A. Wright, Comptroller General of Georgia, Plaintiff in Error, vs. Central of Georgia Railway Company, Defendant in Error, and that a copy hereof has been made and filed in this office.

Witness my signature and the seal of Court affixed this the 11th day of February 1916.

ARNOLD BROYLES,
Clerk Superior Court Fulton County, Georgia;
Ex-Officio Clerk City Court of Atlanta.

e (Endorsed:) No. 33. Supreme Court, Atlanta Circuit, March term, 1916. William A. Wright, Comptroller General of Georgia, versus Central of Georgia Railway Company. Bill of Exceptions. Filed in office February 1st, 1916. Arnold Broyles, Clerk. Filed in office February 12, 1916. W. E. Talley, D. Clerk, S. C. Ga.

f In the Superior Court of Fulton County, Georgia.

Docket No. 34653. In Equity.

CENTRAL OF GEORGIA RAILWAY COMPANY

vs.

WILLIAM A. WRIGHT, as Comptroller General of the State of Georgia.

Petition for Injunction Against Taxation to Petitioner of Leaseholds in Augusta & Savannah Railroad and Southwestern Railroad Company.

Filed in Office this 3rd day of Nov., 1915. W. W. Clarke, Deputy Clerk Superior Court, Fulton County, Georgia.

1 In the Superior Court of Fulton County, Georgia.

In Equity.

CENTRAL OF GEORGIA RAILWAY COMPANY

vs.

WILLIAM A. WRIGHT, as Comptroller General of the State of Georgia.

To the Superior Court of Fulton County:

Central of Georgia Railway Company brings this its petition against William A. Wright, as Comptroller General of the State of Georgia, and for cause of complaint respectfully shows:

1. Petitioner is a railroad corporation chartered by, and, existing under, the laws of the State of Georgia, with its principal office in Savannah within the County of Chatham.

2. The Defendant William A. Wright is, and has been since 1879, Comptroller General of Georgia, and resides in Fulton County, Georgia.

3. The said William A. Wright as Comptroller General of Georgia is empowered by statute to assess for taxation railroad property and franchises and to issue executions therefor. He is clothed
2 with the power of the State and its political subdivisions, and acts for and in behalf of the State and its said political subdivisions.

4. April 17th, 1915, petitioner received from W. A. Wright, Comptroller General, a letter dated April 16th, 1915, as follows:

"Having omitted to return for taxation for the year 1914, as required by law, the value of your leases and leased privileges and other interests less than the fee owned by Central of Georgia Railway Company, in and concerning the railroads in your system of rail-

ways respectively known as the Augusta & Savannah Railroad, extending from Augusta, Ga. to Millen, Ga., and those portions of the Southwestern Railroad extending from Macon to Americus, Cuthbert to Fort Gaines, Fort Valley to Columbus, and Smithville to Cuthbert, under lease from the Augusta & Savannah Railroad Co. and the Southwestern Railroad Co. You are hereby notified that you are delinquent in respect thereto as provided by Sections 1055, 1056 of the Code of Georgia, 1911, and you are hereby required to make a return of all of your said interests to me within 20 days, to be taxed according to the Constitution and Laws of Georgia; or in default the same will be assessed from the best information obtainable, as by statute provided."

"P. S.—For your information I enclose copy of letters this day written the Presidents respectively of the Augusta & Savannah Railroad Co. and the Southwestern Railroad Co., regarding their income tax returns."

Enclosures were substantially the same in form, each dated April 15th, 1915, and were as follows:

"The income tax return made by you February 27th, 1914, was duly received. Under decision of the Supreme Court United
3 States your road owes income tax only on the rental you receive under the lease. The Lessee will be called upon to pay taxes on such value as it has under the lease."

In response to this demand and solely because thereof, and protesting that there was no warrant of law therefor, petitioner made under protest a special tax return, a copy of which is hereto attached, marked "Exhibit No. 1," and hereby made a part hereof.

The defendant rejected the values returned by petitioner and notwithstanding its protest, assessed the properties for taxation as follows:

"Value of leases and lease privileges and other interests less than the fee owned by the Central of Georgia Railway Company in and concerning the Railroad in its system of railroad known as the Augusta & Savannah Railroad, extending from Augusta, Georgia, to Millen, Georgia, under and by virtue of its leases from the Augusta & Savannah Railroad Co., Six Hundred and Eighty-Nine Thousand, One Hundred and Eighty Dollars."—$689,180.00.

"Value of leases and lease privileges and other interests less than the fee owned by the Central of Georgia Railway Company in and concerning the railroads in its system of railroads known as those portions of the Southwestern Railroad extending from Macon to Americus, Cuthbert to Ft. Gaines, Ft. Valley to Columbus, and Smithville to Cuthbert, under and by virtue of its leases thereof from the Southwestern Railroad Company, Three Million, Eight Hundred and Six Thousand, Six Hundred Twenty Dollars."—$3,806,620.00.

Petitioner being dissatisfied with the values assessed by the defendant, elected, under the statutes in such cases made and pro-
4 vided, to proceed to arbitrate said values. The arbitrators, by unanimous award, assessed the properties as described in the Comptroller General's assessment in form and at value as follows:

Leasehold estate of the Central of Georgia Railway Company in the Augusta & Savannah R. R..... $19,748
Leasehold estate of the Central of Georgia Railway Company in those parts of the Southwestern R. R. exempted from ad valorem taxes in the original act of incorporation $1,046,809

5. On or about August 26th, 1915, the defendant served upon petitioner a demand for a return of the same properties for taxation for the years 1908, 1909, 1910, 1911, 1912 and 1913. The demand was identical in form and language with the demand for the year 1914, save and except that in the second demand the post-cript and the enclosures were omitted and the demand covered different years. In response to this demand petitioner made for the six years named a return under protest identical in form and substance with its return under protest for the year 1914, the only difference being that the valuations fixed for each of the said six years in said return were stated as follows, (the valuations having been reached by compromise agreement).

Value of leases, and lease privileges, and other interests less than the fee, owned by the Central of Georgia Railway Company in the Augusta & Savannah Railroad, for each of the years 1908, 1909, 1910, 1911, 1912, and 1913; each year $18,377
Value of leases, and lease privileges, and other interests less than the fee, owned by the Central of Georgia Railway

5

Company in the Southwestern Railroad for the following branches:
Macon to Americus, Ga.,
Cuthbert to Fort Gaines, Ga.,
Fort Valley to Columbus, Ga., and
Smithville to Cuthbert, Ga.,
for each of the years 1908, 1909, 1910, 1911, 1912, and 1913; each year..... $964,467

Aggregate of the two items..... $982,844

Whereupon, notwithstanding the protest therein set forth, the defendant assessed the said properties above described for the years 1908 to 1913 inclusive, in manner and form as he had assessed them for 1914, at the values named in said return made under protest.

6. On or about the 16th day of September, 1915, the defendant issued the following executions against your petitioner for taxes for the year 1914, based on the assessment for that year as follows:

(1) An execution in favor of the State of Georgia in respect of the leasehold interest of petitioner in the Augusta & Savannah Railroad, which execution is in the sum of $88.87, a copy of which is

hereto attached and marked "Exhibit No. 2" and hereby made a part of this petition.

(2) An execution in favor of the State of Georgia in respect of the leasehold interest of petitioner in the Southwestern Railroad, which execution is in the sum of $4,710.64, a copy of which is hereto attached and marked "Exhibit No. 3" and hereby made a part of this petition.

(3) An execution in favor of the County of Richmond in respect of the leasehold interest of petitioner in the Augusta & Savan-
6 nah Railroad, which execution is in the sum of $76.60, a copy of which is attached hereto and marked "Exhibit No. 4" and hereby made a part of this petition.

(4) An execution in favor of the County of Bibb in respect of the leasehold interest of petitioner in the Southwestern Railroad, which execution is for the sum of $511.87, a copy of which is hereto attached marked "Exhibit No. 5" and hereby made a part of this petition.

(5) An execution in favor of the City of Augusta in respect of the leasehold interest of petitioner in the Augusta & Savannah Railroad, which execution is for the sum of $50.07, a copy of which is attached hereto and marked "Exhibit No. 6" and hereby made a part of this petition.

(6) An execution in favor of the "Local School District of Burke County" in respect of the leasehold interest of petitioner in the Augusta & Savannah Railroad, which execution is in the sum of $16.96, a copy of which is hereto attached and marked "Exhibit No. 7" and hereby made a part of this petition.

Unless restrained and enjoined by this Honorable Court, the Comptroller General will issue for the year 1914 against petitioner similar executions to those already issued in favor of the various counties, municipalities and school districts through which the line of the Augusta & Savannah Railroad runs, and through which those lines of the Southwestern Railroad run which are described in the Comptroller's assessment.

Petitioner attaches hereto, marked "Exhibit No. 8" and hereby made a part of this petition, copy of a list of the executions issued and about to be issued for said taxes for the year 1914 (which list was furnished to petitioner by defendant), showing the amount of each execution in favor of the State, and each County, Municipality and School District through which the line of the Augusta &
7 Savannah Railroad runs, and through which those lines of the Southwestern Railroad Company run which are described in the Comptroller General's assessment. The said executions for taxes for the year 1914 will aggregate, exclusive of interest, the sum of $17,913.79.

The method pursued by the defendant in distributing the assessed value of the leasehold interest of petitioner in the Charter Tax Lines of the Southwestern Railroad Company (which are the lines described in the defendant's assessment) among the various political subdivisions through which said Charter Tax Lines of the Southwestern Railroad run, was to distribute to each of said political subdi-

visions such proportion of the total asssesed value of said leasehold interest as the number of miles of said Charter Tax Lines of the Southwestern Railroad Company, which lie in such political subdivision bears to the total mileage of said Charter Tax Lines of the Southwestern Railroad Company. To the value thus ascertained for each political subdivision, the tax rate of said political subdivision was applied and thus the amount was ascertained for which the execution was issued in favor of each political subdivision. The same method was pursued by the defendant to ascertain the amount of the several executions issued by him in favor of the political subdivisions through which the Augusta & Savannah Railroad runs.

7. The defendant unless restrained and enjoined by this Honorable Court, will issue similar tax executions in favor of the State, Counties, Municipalities and School Districts against your petitioner for each of the years 1908, 1909, 1910, 1911, 1912 and 1913, distributed between the Counties, Municipalities and School Districts on the same basis and in the same manner as such distribution has been made for the year 1914. The said executions, if issued, will aggregate the amount without interest of about One Hundred Thousand ($100,000.00) Dollars. The said executions, if issued, will each draw interest at the rate of seven per cent. (7%) per annum from the date on which the tax should have been paid.

8 8. "The Central Railroad & Banking Company of Georgia" was chartered by an Act of the General Assembly of the State of Georgia, approved December 14th, 1835, and operated a system of railroads in the State of Georgia until the 4th day of March, 1892. The main line of road operated was the line of railroad from Savannah, Georgia, to Atlanta, Georgia. This main line was connected at Macon, Georgia, with the lines of "Southwestern Railroad Company," and at Millen, Georgia, with the line of "Augusta & Savannah Railroad."

May 1st, 1862, Augusta & Savannah Railroad (formerly Augusta & Waynesboro Railroad) leased its railroad (which runs from Millen, Georgia, to Augusta, Georgia) and its franchises to Central Railroad & Banking Company of Georgia, a copy of the lease being hereto attached and marked Exhibit "No. 9" and hereby made a part of this bill.

June 24th, 1869, Southwestern Railroad Company leased its railroad and franchises to Central Railroad & Banking Company of Georgia, a copy of said lease being hereto attached, marked Exhibit "No. 10" and hereby made a part of this bill.

The Central Railroad & Banking Company of Georgia, Augusta & Savannah Railroad (then known as Augusta & Waynesboro Railroad) and Southwestern Railroad Company were specifically authorized to enter into said respective leases by a special Act of the General Assembly of Georgia, approved January 22nd, 1852 (Acts 1852, p. 119), entitled "An Act to authorize The Central Railroad & Banking Company of Georgia to lease and work such railroads as now connect, or may hereafter connect, with the Central Railroad, and to authorize the Board of Directors of such Railroad Companies as now have or may hereafter have their respective railroads connecting

with the said Central Railroad to make leases thereof for a term of years, or during the continuance of their respective charters."

9 In the body of this Act Augusta & Savannah Railroad and Southwestern Railroad Company are specifically mentioned, the charters of the said two companies last named being respectively perpetual charters.

Under the 16th section of the Act incorporating Augusta & Waynesboro Railroad (subsequently Augusta & Savannah Railroad) approved December 31st, 1838, Augusta & Waynesboro Railroad was expressly authorized to "rent or farm out all or any part of their exclusive right of transportation of freight or conveyance of passengers, with the privilege, to any individual or individuals or other company, and for such term as may be agreed upon. And the said company, in the exercise of their right of carriage or transportation of freight or passengers, or the persons or company so renting from said company, the right of transportation or conveyance shall, so far as they act on the same, be regarded as common carriers."

9. March 4th, 1892 all of the property and assets of Central Railroad & Banking Company of Georgia, including its system of railroads and its leasehold interest in Augusta & Savannah Railroad and in Southwestern Railroad, passed into the hands of Receivers of the Circuit Court of the United States for the Southern District of Georgia. June 30th, 1893, the said Receiver being then in possession of the leaseholds of Augusta & Savannah Railroad and said Southwestern Railroad, and operating the same under the said leases, the Receiver was directed by the Court to ascertain whether they desired to permit their properties to remain in the hands of the Receiver, as representing the lessee Company, with the right on the part of the said lessors, or either of them, to claim the net results of the operation of their respective properties up to the contract rental, but not beyond; or whether the said respective corporations should receive from the Receiver the surrender of the leasehold interests held by him as Receiver of the Central Railroad & Banking Company of Georgia; and the Court further ordered

10 that if either of said Companies should make known their option to receive the surrender of the leasehold interest, the said Receiver should apply to the Court for an order authorizing and directing the surrender of the same; or should either of said Companies elect to permit the said leasehold interests to remain in the hands of the Receiver, said Companies should have the right to claim from the Court the net results of the operations of their respective properties by the Receiver up to the contract rental and no more, unless the Receiver should, under the order of the Court, elect to retain said leasehold interests and to pay therefor the contract rental.

Augusta & Savannah Railroad and Southwestern Railroad Company both elected to permit their respective properties to remain in the hands of the Receiver under this order, and the Receiver operated said railroads respectively from said date to November 1st, 1895, Augusta & Savannah Railroad and Southwestern Railroad Com-

pany respectively received the net earnings of their lines of railroad, which in neither case was as much as the rental stipulated for under the respective leases.

10. All of the properties and assets of the Central Railroad & Banking Company of Georgia were sold under foreclosure decrees at judicial sales, and for the most part were purchased by Samuel Thomas and T. F. Ryan, who had put forth a plan of re-organization for the acquirement of the properties and assets of the Central Railroad & Banking Company of Georgia, and in 1895 organized a new Company known as "Central of Georgia Railway Company" to take over the railroads and properties purchased by them under said re-organization plan.

As a part of the re-organization plan Thomas and Ryan negotiated a modification and renewal of the leases of Augusta & Savannah Railroad and Southwestern Railroad whereby the Augusta & Savannah Railroad and Southwestern Railroad Company were each
11 to receive for the time such railroads were operated by the Receiver an amount equivalent to five (5%) per cent on their respective capital stocks, diminished by such amounts as they should receive from the earnings of their respective railroads under the Receivers, and whereby Augusta & Savannah Railroad and Southwestern Railroad Company would modify and renew their respective leases to Central Railroad & Banking Company of Georgia to Thomas and Ryan, as purchasers, their associates and assigns, to be organized anew as substitutes for the original stockholders, with all their powers, rights, privileges, duties, liabilities and other powers as provided in the statutes now embodied in sections 2585 (par. 11, 12) and 2586 of the Code. Petitioner is the successor corporation thus organized.

Among the assets and properties purchased by Thomas and Ryan, under the said re-organization plan, were the leasehold interests of the Central Railroad & Banking Company of Georgia in Augusta & Savannah Railroad and Southwestern Railroad Company, and possession of the railroads and properties of those companies was delivered by the Receivers on the order of Thomas and Ryan, purchasers, to Central of Georgia Railway Company lessee under a decree of the said Circuit Court of the United States dated November 1st, 1895.

11. On October 17th, 1895, upon the petition of Thomas and Ryan, as purchasers under judicial sale aforesaid, and their associates, Central of Georgia Railway Company was incorporated under an Act of the General Assembly of the State of Georgia for the incorporation of railroads approved December 17, 1892, and the acts amendatory thereof, (Code §§2585-6) with all the rights, powers, privileges and immunities enjoyed by Central Railroad & Banking Company of Georgia under its original charter and amendments thereto, and with all the rights, powers, privileges and franchises provided in the laws of Georgia and particularly by the said Act approved December 17, 1892, and the acts amendatory
12 thereof, and the said petitioners under said charter and the statutes under which they were incorporated, were substituted

for the original stockholders of the Central Railroad & Banking Company of Georgia. The said petition for incorporation specified particularly that the Central Railroad & Banking Company of Georgia was endowed with corporate capacity and power under the above mentioned act of January 22, 1852, to lease and work Southwestern Railroad, Augusta & Savannah Railroad and all other lines of railroad connecting with its own.

12. On October 24th, 1895, Augusta & Savannah Railroad (formerly Augusta & Waynesboro Railroad) entered into a contract with Central of Georgia Railway Company whereby the lease of its railroad to Central Railroad & Banking Company of Georgia was modified and renewed to Central of Georgia Railway Company, the said renewed and modified lease running from November 1st, 1895, for the full term of 101 years, and renewable in like periods upon the same terms forever, the right to renewals to be in conformity to the laws authorizing it, and for the period that the corporate existence of the lessee may be continued.

Under said lease the lessee covenanted to pay "all federal, state, county or municipal taxes and assessments, ordinary or extraordinary, then resting or thereafter to be lawfully imposed upon the lessor or its property under its charter and the Constitution and laws of the State of Georgia." The said lease provided for an annual rental which is paid semi-annually. Said lease is defeasible upon the non-payment of the rent. The lease is in no essential respects different from an ordinary lease of real estate, except that the term is for a long period of time. A copy of the lease is hereto attached, marked Exhibit "No. 11" and hereby made a part of this bill.

On October 17th, 1895, Southwestern Railroad Company entered into a contract with Central of Georgia Railway Company
13 whereby the lease of its railroad to Central Railroad & Banking Company of Georgia was modified and renewed to Central of Georgia Railway Company, the said renewed and modified lease running from November 1st, 1895 for the full term of 101 years, and renewable in like periods upon the same terms forever, the right to renewals to be in conformity to the laws authorizing it, and for the period that the corporate existence of the lessee may be continued. This lease covers the same lines of railroad as were covered by th- original lease of June 24th, 1869.

Under said lease the lessee covenanted to pay "all federal, state, county or municipal taxes and assessments, ordinary and extraordinary, then resting or thereafter to be lawfully imposed upon the lessor or its property under its charter and the Constitution and laws of the State of Georgia." The said lease provided for an annual rental which is paid semi-annually. Said lease is defeasible upon the non-payment of the rent. The lease is in no essential respects different from an ordinary lease of real estate, except that the term is for a long period of time. A copy of the lease is hereto attached, marked Exhibit "No. 12," and hereby made part of this bill.

13. "Augusta & Waynesboro Railroad" was incorporated under an Act of the General Assembly of Georgia, approved December

31, 1838 (Acts 1838, p. 174). Its name was subsequently changed to "Augusta & Savannah Railroad," by an Act of the General Assembly of the State of Georgia, approved February 16th, 1856 (Acts 1856, p. 185). Under the 13th section of the original charter of Augusta & Waynesboro Railroad (now Augusta & Savannah Railroad), granted December 31, 1838, it was enacted:

"That the said Rail Road and the property of said Company, shall not be subject to be taxed higher than one-half of one per centum, on its annual income; and no city or town corporation shall have power to tax the stock of said Company, but may
14 tax any property, real or personal, of said Company, within the jurisdiction of said city or town, in the same ratio of taxation of like property."

14. Under said charter and in reliance thereon Augusta & Savannah Railroad performed its part of the contract. It built its entire railroad under said charter from Millen, Georgia, to Augusta, Georgia, and said charter, and the provisions thereof with respect to taxation hereinbefore quoted, constitute an inviolable and irrepealable contract with the State of Georgia, and are not repealed, modified or affected in any manner by the lease of said railroad to The Central Railroad & Banking Company of Georgia, or its subsequent modification and renewal to Central of Georgia Railway Company, as hereinbefore set forth.

15. The railroad and property of Augusta & Savannah Railroad (Millen, Georgia, to Augusta, Georgia), were for the year 1914 and for all years prior thereto regularly and continuously returned to Comptroller General of the State of Georgia for taxation and were assessed and taxes thereon were paid for the year 1914 and all prior years in accordance with the special provision in its charter hereinbefore recited, to-wit: at the rate of one-half of one per cent, upon the income thereof. The railroad and property of Augusta & Savannah Railroad are not and never have been exempt from taxation; they are merely taxable on a different basis from other property generally, which is taxed on the basis of its value. The taxes which are assessed and paid by Augusta & Savannah Railroad under its charter are in full for all taxes and the said railroad and property are completely and exhaustively taxed under its special charter provision.

16. "Southwestern Railroad Company" is a railroad corporation chartered by the State of Georgia by special Act of the General Assembly, approved December 27, 1845 (Acts 1845, p. 132).
15 This charter was afterwards amended by sundry Acts of the General Assembly, the details of which are not material to this cause. "Muscogee Railroad Company" was chartered by the General Assembly of the State of Georgia by a special Act approved December 27, 1845 (Acts 1845, p. 116). Muscogee Railroad Company constructed the line from Butler to Columbus, Georgia, being 50.85 miles in length, which is included in the line herein described "Ft. Valley to Columbus" line. By an Act of the General Assembly approved March 4, 1856 (Acts 1856, p. 187), Muscogee Railroad Company, its franchises and property were united with and merged

into Southwestern Railroad Company under the charter of Southwestern Railroad Company, and all of the rights, privileges and property of Muscogee Railroad Company became part and parcel of Southwestern Railroad Company.

Under Section 14 of the original charter of Southwestern Railroad Company, granted December 27, 1845, it is enacted in the 14th section thereof:

"That the said rail-way and its appurtenances, and all property therewith connected, shall not be subject to be taxed higher than one-half of one per cent. upon its annual nett income."

By the 5th section of the charter of Muscogee Railroad Company, granted December 27, 1845, and under which the line from Butler to Columbus was built, it is enacted:

"That the capital stock of the said Rail Road Company shall not be taxed by the State higher than one-half of one per cent. upon its nett income, nor shall any other tax be levied or collected on the stock of said company."

The charter tax provisions above recited constitute an irrevocable and inviolable contract with the State of Georgia, and are not repealed, modified or affected in any manner by the lease
16 of said railroad to The Central Railroad & Banking Company of Georgia, or its subsequent modification and renewal to Central of Georgia Railway Company as hereinbefore set forth.

17. The total mileage of the lines of Southwestern Railroad Company in Georgia is 329.59 miles. Of this mileage the following lines, which are hereinafter referred to as "Charter Tax Lines," are taxable under the above recited charter provisions, to-wit:

Charter Tax Lines.

1. Macon to Americus	70.69	Miles
2. Smithville to Cuthbert	36.78	"
3. Cuthbert to Fort Gaines	19.86	"
4. Fort Valley through Butler to Columbus	71.39	"
Total charter tax lines	198.72	"

These charter tax lines constitute 60.29% of the mileage of the Southwestern Railroad in Georgia. These are the lines or portions of the Southwestern Railroad as to which the defendant demanded that petitioner should return its lease-hold interest, as to which petitioner made its return under protest and as to which defendant has assessed petitioner.

The remaining lines of the Southwestern Railroad Company in Georgia are not covered by the above recited tax provision of the charter of the Southwestern Railroad Company, but are taxable on the ad valorem basis as all property in Georgia is taxable. These lines which are hereinafter described as "General Tax Lines" constitute 39.71% of the mileage of the Southwestern Railroad in Georgia and are as follows:

17 *General Tax Lines.*

1.	Americus via Smithville and Albany to Chattahoochee River	96.05 Miles
2.	Cuthbert to Chattahoochee River	22.40 "
3.	Fort Valley to Perry	12.42 "
		130.87 "

The defendant has not demanded of petitioner a return for taxation of petitioner's lease-hold interest in any of these General Tax Lines of the Southwestern Railroad, nor was such interest included in petitioner's returns, nor has such interest been assessed by defendant for taxation.

18. The defendant intentionally omitted to demand any return from petitioner of its lease-hold interest in said General Tax Lines, and intentionally omitted to assess such interest for taxation. The defendant has not taxed petitioner with its lease-hold interest in said General Tax Lines because said lines have been taxed on the ad valorem basis as has all other property in Georgia, it being defendant's theory that said lines having paid all the taxes which under the Constitution and laws of the State of Georgia they are required to pay, it is not lawful to tax defendant's lease-hold interests therein, as this would be in substance taxing the same property twice. On the other hand defendant has required petitioner to pay taxes on its lease-hold interest in the Charter Tax Lines because it is his theory that these lines being taxed only on their income should pay taxes to the State of Georgia and its political subdivisions on their value as other property in the State of Georgia is taxed, and as they cannot be taxed to their owners on the ad valorem basis, then their value can be reached by taxing the Lessee with its lease-hold interest therein, and that while lease-holds in real estate in Georgia are not generally taxed, it is no discrimination to tax the leaseholds of petitioner in the
18 Augusta & Savannah Railroad and in the Charter Tax Lines of the Southwestern Railroad, because those railroad lines only pay taxes on their income and therefore it is permissible to tax them on their values to the Lessee, while in the case of petitioner's leasehold interest in the General Tax Lines of the Southwestern Railroad and in the case of other lease-holds in Georgia real estate which is uniformly not taxed, the property itself pays taxes on its value and to tax the value of the leasehold estate is in effect double taxation.

On August 31, 1915, the defendant wrote to the attorneys of the Augusta & Savannah Railroad and Southwestern Railroad, in reply to an inquiry from them as to the amount of taxes due by said corporations for the year 1915, the following letter:

"Your letter of August 30th received and enclosed you will please find statements of the income taxes due by the Augusta & Savannah and the Southwestern. These statements were not mailed along with other statements for the reason that Judge Hart, the State's attorney in the case, requested the clerk making them up not to send them out.

"Payment of these income taxes will be accepted without prejudice

to the contention of the State in the litigation proposed. Any excess payment of income tax will of course be credited on whatever ad valorem taxes it is finally determined are due."

19. The charter tax lines of Southwestern Railroad Company were for the year 1914 and all years prior thereto regularly and continuously returned to the Comptroller General of the State of Georgia and were assessed and taxes were paid thereon for the year 1914 and all prior years in accordance with the special provision in the charter, that is at the rate of one half of one per cent. on the net income thereof. The said charter tax lines are not and never have been
19 exempt from taxation; they are merely taxable on a different basis from other property generally, which is taxed on the basis of value. The taxes which are assessed and paid by Southwestern Railroad Company in respect of said charter tax lines are in full of all taxes and the said lines are completely and exhaustively taxed under said special charter provision.

The General Tax lines of Southwestern Railroad Company were for the year 1914, and for all years prior thereto, regularly and continuously returned to the Comptroller General for taxation and were assessed and taxes were paid thereon on the ad valorem basis at the same rate as other property in the State.

20. Neither the Augusta & Savannah Railroad nor the Southwestern Railroad Company now own, nor did either of them in 1895 or since own any engines, cars, tools or other railroad equipment. All engines, cars and like equipment used by the Central of Georgia Railway Company in the operation of both the Augusta & Savannah Railroad and the Southwestern Railroad are owned by Central of Georgia Railway Company and are returned by it for ad valorem taxation under the laws of Georgia, and all taxes thereon have been paid.

21. For many years the tax authorities of the State of Georgia have been trying to subject the Augusta & Savannah Railroad and the Charter Tax Lines of the Southwestern Railroad to ad valorem taxes. The revenue derived from the taxation of said lines of railroad on the income basis is very much smaller than that which would be derived if said lines could be taxed on the ad valorem basis. For the year 1914 the Augusta & Savannah Railroad paid taxes amounting to $364.82 on an income of $72,953.33, and for the same year the Southwestern Railroad Company paid a tax on the Charter Tax Lines of $2,137.81 on an income of $427,562.00. If the said two
20 properties had been taxed on the basis of their value and at the same rate and in the same manner as other property in this State is taxed, the revenue derived by the State of Georgia and its subordinate political divisions for the year 1914 would have been approximately between $50,000 and $100,000.

On the 28th of February, 1874, the General Assembly of the State of Georgia passed an Act to repeal the tax provisions of the charters of the Augusta & Savannah Railroad and the Southwestern Railroad Company and to tax them on the ad valorem basis. In the case of the Augusta & Savannah Railroad this Act was declared void by the Supreme Court of Georgia on the ground that it impaired the obligation of the contract. The case is reported as State vs. Augusta &

Savannah Railroad, 54 Ga. 401. In the case of the Southwestern Railroad Company the Supreme Court of Georgia decided that the tax provision of the Southwestern Railroad Company charter was repealed by the union and consolidation of the Southwestern and Muscogee Railroad Companies, which created a new corporation. This case is reported as Southwestern Railroad Company vs. State, 54 Ga. 401. This decision was reversed by the Supreme Court of the United States and is reported as Southwestern vs. State of Georgia, 92 U. S. 676.

Again in 1877 the Comptroller General of the State of Georgia issued executions for taxes against the Augusta & Savannah Railroad on the ad valorem basis for the years 1876 and 1877. The litigation which ensued upon the levy of these executions is reported in the case of Goldsmith vs. Augusta & Savannah Railroad, 62 Ga. 468. In that case it was decided, head note 3:

"The lease of a road to another Company by authority of the Legislature does not affect the basis of taxation. The income contemplated by the charter is not the annual rental but the earnings of the
21 road. The Act authorizing the lease, not having any provision in regard to taxation, the limit in the charter was not lost or changed by the lease."

Notwithstanding the decision of the Supreme Court of the United States above referred to, the Comptroller General of the State again issued executions against the Southwestern Railroad Company for taxes for the years 1876 and 1877. The litigation which thereupon ensued is reported as Goldsmith vs. Southwestern Railroad Company, 62 Ga. 495, and Wright vs. Southwestern Railroad Company, 64 Ga. 783. In that litigation the Supreme Court sustained the tax provisions of the charter as to the lines hereinbefore described as Charter Tax Lines.

Again in the year 1911 the defendant, William A. Wright, as Comptroller General of Georgia, issued executions against your petitioner for the year 1911 and threatened to issue executions for prior years against your petitioner, under which executions your petitioner was taxed with the Augusta & Savannah Railroad and with the Charter Tax Lines of the Southwestern Railroad Company on the theory that your petitioner, by virtue of its leases of said lines of railroad, was the virtual owner thereof. Your petitioner thereupon filed its bill in the District Court of the United States for the Northern District of Georgia to enjoin and restrain the defendant, William A. Wright, as Comptroller General of the State of Georgia, from enforcing said executions against your petition on the ground that said Comptroller General was proceeding without due process of law and that the laws under which he claimed to be proceeding impaired the obligation of the contracts contained in the charters of the Augusta & Savannah Railroad and the Southwestern Railroad Company, contrary to the Constitution of the United States. This litigation resulted in the final decree, a copy of which is hereto attached, marked "Exhibit 13" and hereby made a part of this petition, under which decree the said Comptroller General was finally enjoined and
22 restrained from enforcing said executions. This decree was affirmed on appeal by the Supreme Court of the United States,

the case being reported under the title of Wright vs. Central Railway, 236 U. S. 674.

In its opinion the Supreme Court of the United States, considering the effect of the leases and the legislative authority therefor on the tax provisions of the charters, says:

"We cannot suppose that the Legislature meant either to practice a cunning deception or to make a futile grant. Therefore, we are unable to read the charter as making the exemption vain by reserving to the State an unlimited right to impose upon the lessee all that it had renounced as against the lessor. For that was to give notice to the parties, if they were supposed to know the law, that the exemption would be lost if the income was earned in one of the contemplated ways—or, if they were supposed ignorant, was to invite them to a bargain that was to have an unexpected and disastrous result * * * We see no ground for believing that there has been any change in the attitude of the State toward the pioneer enterprises that it was encouraging a few years before. We still cannot suppose that it was inviting the lessors to lose the benefit of their exemption or the lessees to find themselves entrapped with a burden made possible only by accepting the invitation of the act. * * * But the disregard of technical distinctions is in the interest of substantial justice, not for the purpose of enabling the State to escape from a binding bargain. If we are right in our interpretation of the statute from which the parties to the leases got their powers, this later legislation of Georgia is immaterial or should not be construed as embracing an attempt to escape from a contract by a subtlety that almost defies ingenuity to understand."

The mandate of the Supreme Court of the United States in that case has been made the judgment of the District Court of the
23 United States for the Northern District of Georgia.

22. The defendant, William A. Wright, has been Comptroller General of Georgia continuously since the year 1879. The relation of Petitioner to the properties of the Southwestern Railroad and the Augusta & Savannah Railroad and to those two corporations are today in all respects the same as they were on November 1, 1895, when Petitioner first entered into possession of them, and differ in no material respects from the relation of the Central Railroad & Banking Company of Georgia, its predecessor, which in the case of the Augusta & Savannah Railroad continued from 1862, the date of the lease, to 1895, and in the case of the Southwestern Railroad from 1869, the date of that lease, to 1895. These relations have been public and notorious and were known at the time of the litigation over the taxation of the Southwestern Railroad Company and the Augusta & Savannah Railroad in 1874 and the years immediately following, which has been hereinbefore referred to, and the fact that these properties were then under lease to the Central Railroad & Banking Company of Georgia (to which petitioner is successor) is referred to in the published reports of those cases as being without effect upon the applicability of the charter provisions. These relations have been known during all this period to the tax authorities of the State of Georgia, and particularly to the defendant, William A. Wright, dur-

ing his incumbency of the office of Comptroller General. During all of this time no demand has ever been made upon your petitioner for a return of its leasehold interests in said properties until the demand made by the defendant on April 16, 1915, which is set forth in the 4th paragraph of this petition. Nor was any demand ever made of its predecessor, the Central Railroad and Banking Company of Georgia, to return its leasehold interest in said properties for taxation. During all of this period the only tax which has been paid to the State of Georgia in respect to the Augusta & Savannah Railroad and the Charter Tax Lines of the Southwestern Railroad is
24 the tax of ½ of 1% on the income, as provided by the tax provisions of their respective charters. This long continued practice of the tax department of the State is strong evidence that leasehold interests of your petitioner and its predecessor in said properties were not taxable under the laws of the State of Georgia.

23. Leasehold estates or interests in real estate are not taxable in Georgia separate and distinct from the real estate itself, except the so-called mineral, timber, turpentine and oyster leases which are specifically taxed under the statutes of the State and which are not in fact leases but are distinct interests in a part of the land itself and which are separable from the land itself. It has never been the policy or law of the State of Georgia to carve real property into separate estates for the purposes of taxation. It has always been the policy of the State of Georgia to tax real estate at its value, leaving to the owners of separate estates and interests, if any, to settle among themselves their liability inter sese for the tax assessed.

The Constitution of the State of Georgia does not require leasehold interests in real estate to be taxed separate and apart from and in addition to a tax on the real estate itself. A single tax upon any species of property will satisfy the demands of the Constitution of Georgia. Both the Augusta & Savannah Railroad and the Charter Tax Lines of the Southwestern Railroad Company have been taxed in accordance with the tax provisions of their charters, and the defendant has no warrant or authority of law to tax your petitioner with its leasehold interests in said properties, and therefore the tax executions issued and about to be issued by the defendant are null and void.

24. The leases under which your petitioner holds and operates the Augusta & Savannah Railroad and the Charter Tax Lines of the Southwestern Railroad Company do not grant any estate in
25 the respective railroad properties, but merely create the relation of Landlord and Tenant, and all that your petitioner as Tenant has acquired is the usufruct of the property. The mere right to use real estate as a tenant is not taxable under the laws of the State of Georgia and the defendant has no warrant or authority of law to tax to your petitioner such interest in said railroad properties and therefore the tax executions which the defendant has issued and is about to issue against petitioner are null and void.

25. Your petitioner has been singled out by the defendant among all the tax payers in Georgia and has been assessed for taxes upon its leasehold interest in said railroad property for the years 1908 to

1914, both inclusive, while no other tax payer in the State of Georgia has ever been assessed by the defendant with respect to a similar leasehold interest in real estate in Georgia.

Tax payers in the State of Georgia are not required by the Receivers of Tax Returns to return and in point of fact do not return for taxation leasehold interests in real estate (except such interests as mineral, timber, turpentine and oyster leases which, as previously set forth herein, are property taxable separately from the land itself), and this fact is well known to the defendant.

The defendant, as Comptroller General of the State of Georgia, is charged by law with supervision over the Receivers of Tax Returns in the State of Georgia and prescribes the form of questions and prepares the printed list thereof and furnishes the same to said Receivers of Tax Returns to submit to the persons and corporations who make their returns of property for taxation to the Receivers of Tax Returns. Petitioner attaches hereto a copy of the printed form for returns of property to Receivers of Tax Returns which is prescribed by the Comptroller General and uniformly used in all Counties in the State. The said printed form is marked "Exhibit No. 14" and hereby made a part of this petition. There is no
26 question on the form which is at all similar to the demand made by the defendant on petitioner to return the "value of your leases and lease privileges and other interests less than the fee."

The only question on the form which relates even remotely to the matter of leases is Question 30, which is as follows:

"The value of all other property, not herein mentioned, including mineral and timber leases?"

This same form substantially has been used for the years 1908 to 1914, both inclusive, except that the words "including mineral and timber leases," being the last clause of Question 30, did not appear on the form until the year 1914.

Code Section 1087, which prescribes the questions to be propounded to tax payers, contains among other questions the question:

"What is the value of your leases and leased privileges or other assets of like character?"

This question does not appear on the form prescribed by the Comptroller General, nor do many of the other questions contained in said Code Section appear on said form prescribed by the Comptroller General. The Comptroller General issues a printed book of instructions each year to the Receivers of Tax Returns entitled "Instructions of the Comptroller General to the Receivers of Tax Returns of Georgia for the year —." The book issued for the year 1914, which is substantially similar to the books issued yearly from 1908 to 1914, contain the printed lists of questions to be propounded to tax payers which are identical with the forms issued to the Receivers of Tax Returns to be used in receiving the tax payers return. These books contain all of the tax laws of the State of Georgia in an appendix except the Act codified in Code Section 1087, which pre-
27 scribes the list of questions to be propounded to tax payers. This is omitted because it is substantially modified and re-

pealed by the subsequent biennial tax acts, the last of which, and the one now of force, being the Act of August 16th, 1909, the 15th and 20th sections of which provide for the making up of the lists of questions by the Comptroller General.

The Comptroller General also prescribes the form on which Railroad Corporations make their returns to him. Petitioner attaches hereto the printed form which is so prescribed, which is marked Exhibit No. 15 and hereby made a part of this petition. No provision is made on the form for the return of leasehold interests.

There are large numbers of leasehold interests in real estate in Georgia which are subject to taxation if the leaseholds of petitioner in said railroad lines are subject to taxation. There are large numbers of farms, lands, buildings, warehouses, hotels, etc., which are under lease. The existence of such leases is a matter of common knowledge. The omission to tax them is not accidental or sporadic, but is intentional and deliberate, and in point of fact such interests have never been taxed in the State of Georgia.

The defendant has no intention of taxing any other such leaseholds for the year 1914 or for previous years, and has no intention of instructing the Receivers of Tax Returns in the various counties to demand returns of such leaseholds for the years 1914 and previous years and the Receivers of Tax Returns will not demand or require such returns for 1914 and previous years.

The taxation of petitioner with the leasehold interests of said railroads for the year 1914 and for previous years and the omission to tax other persons or corporations in the State of Georgia similarly situated, is a denial to petitioner of equal protection of the law
28 and is a taking of its property without due process of law, contrary to the 14th amendment to the Constitution of the United States, and also contrary to Article I, Section 1, paragraph 2, of the Constitution of the State of Georgia (Code Section 6358), Article I, Section 1, paragraph 3, of the Constitution of the State of Georgia (Code Section 6359), and also Article VII, section 2, paragraph 1, of the Constitution of the State of Georgia (Code Section 6553).

26. Defendant has assessed said leasehold estates not only for State taxation but for County, Municipal and School District taxation. There is no law of the State of Georgia providing for the assessment of taxes in favor of Counties, Municipalities or School Districts against leasehold estates in railroads; and no machinery, provision, plan or rule provided by law for the apportionment thereof among the subdivisions through which said leased railroads run, and therefore the apportionment and assessment made by the defendant among the Counties, Municipalities and School Districts through which said railroads run are without lawful warrant and authority, and the tax executions issued by the Comptroller General and those which he is threatening to issue in favor of Counties, Municipalities and School Districts are null and void.

Even if there is lawful authority for assessment of taxes in favor of Counties, Municipalities and School Districts against leasehold estates in railroads running in or through such political subdivisions,

and even if there is machinery for the apportionment of the values of such leasehold estates among said political subdivisions for the purposes of taxation, the distributions which have been made for the year 1914, and those which the Comptroller General is about to make for prior years, of the leasehold interest of petitioner in the Charter Tax Lines of the Southwestern Railroad Company among the political subdivisions through which said Charter Tax Lines run, are without warrant of law and contrary to the law.

29 The leasehold interest in the Charter Tax Lines of the Southwestern Railroad Company have been assessed in one lump sum and there is no separation of values as between the different lines of railroad which make up said Charter Tax Lines. The line which runs from Smithville through Cuthbert to Fort Gaines is one continuous line and is disconnected at both ends from any of the other Charter Tax Lines, notwithstanding which fact the Comptroller General has distributed the whole assessed value of the leasehold interest in all the Charter Tax Lines among the political subdivisions through which the said Charter Tax Lines run, so that the political subdivisions on the line from Smithville to Fort Gaines participate in the value of the leasehold interest in the other Charter Tax Lines, and the political subdivisions on the said other Charter Tax Lines participate in the value of the leasehold interest in the line from Smithville to Fort Gaines, although the line from Smithville to Fort Gaines is entirely disassociated and disconnected from the other Charter Tax Lines.

The Charter Tax Line which runs from Macon through Fort Valley to Americus, and the Charter Tax Line which runs from Fort Valley to Columbus, are not separately assessed but in the distribution which has been made by the Comptroller General are treated as one continuous line, whereas if any distribution should be made among the political subdivisions through which said lines run, they should be treated as two separate lines and the distribution between the political subdivisions on each particular line made accordingly.

Therefore, the executions which the Comptroller General has issued and is about to issue for the year 1914 in favor of the Counties, Municipalities and School Districts through which the Charter Tax Lines of the Southwestern Railroad Company run, and the executions which he is threatening to issue for prior years on the same basis as those issued for the year 1914, are null and void and without warrant or authority of law.

30 27. The tax provisions of the charter of Augusta & Savannah Railroad and of Southwestern Railroad Company are both irrepealable and inviolable contracts with the State of Georgia. The said charter tax provisions do not constitute tax exemptions, but on the contrary provide for the taxation of said railroad properties. The said tax provisions specify the manner and the rate of taxation of said properties. It is expressly provided in said charters that said railroad properties shall not be subject to be taxed higher than one half of one per cent on their income. These provisions are mandatory and exclusive. It was intended that when

said railroad properties were taxed in accordance with their charters such taxation would be exclusive of all other taxation of said property. The tax imposed under the charter provisions relates to the specific railroad properties themselves; the provision of the charters is not that said corporations shall be taxed on their income, but that the specific railroad shall not be subject to be taxed higher than one half of one per cent on its income. The said charter provisions relate only to the railroad and its appurtenances and do not apply to other property owned by the corporation and not used in connection with its railroad business, all of which has been taxed ad valorem.

The Act of January 22, 1852, hereinbefore recited, under authority of which the lease of said two railroads was made to Central Railroad & Banking Company of Georgia, and its successor, Central of Georgia Railway Company, did not impair or alter the taxability of said railroad properties under their charters. It was not contemplated or intended that the said leasehold interests acquired by the Lessee should be taxed separately and in addition to the tax imposed on the property by the charters of the Lessors. There was no law of the State of Georgia in force at the time of said leases of either the Augusta & Savannah Railroad, which was made in 1862, or of Southwestern Railroad Company, which was made in 1869, which provided for the taxation of leasehold interests. Both the Augusta & Savannah Railroad and Southwestern Railroad Company being empowered to farm out and lease their respective railroads it was not intended that the said railroads when leased should be taxed any differently than provided by their charters, nor was it -tended that the said railroads when leased should be taxed in addition to the taxation of the property itself for that would diminish the value of the property. So long as the Augusta & Savannah Railroad owns its railroad and so long as the Southwestern Railroad Company owns its railroad, the taxation of the respective railroads in accordance with their charter provisions exhausts the taxability of the railroads themselves, and the taxation of the leasehold interests would in substance be additional taxation of the railroads, which is contrary to the terms and intention of the charter provisions which is insistent that the railroad shall not be subject to be taxed higher than one half of one per cent on its income, the income referred to being not the rentals paid by the Lessee, but the earnings from the operation of the railroad, whether operated by Lessor or Lessee. Therefore the defendant is proceeding without lawful warrant or authority and contrary to the said charter tax provisions, and the said tax executions issued and about to be issued by defendant against Petitioner are null and void.

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28. As it is contrary to the tax provision of the charter of the Augusta & Savannah Railroad, and contrary to the tax provision of the charter of the Southwestern Railroad Company, to tax the leasehold interest in the railroad of the former and in the Charter Tax Lines of the latter, and as said charter provisions are inviolable and irrepealable contracts with the State of Georgia, no law of the

State of Georgia passed subsequent to the date of said charters can affect or impair the obligation of said charter contracts. The said leases made by the Augusta & Savannah Railroad and the Southwestern Railroad Company to the Central Railroad & Banking Company of Georgia, and the modifications and renewals thereof to its successor, Central of Georgia Railway Company, were
32 made on the faith of the provisions contained in the charters of the Augusta & Savannah Railroad and the Southwestern Railroad Company with respect to taxation, and the obligation of said contracts of lease cannot be impaired or affected by any law of the State of Georgia passed subsequently thereto.

The defendant claims that he is proceeding under the following provisions of the Constitution of the State of Georgia:

(1.) Article IV, Section 1, Paragraph 1 (Code §6462), which provides:

"The right of taxation is a sovereign right, inalienable, indestructible, is the life of the State, and rightfully belongs to the people in all republican governments, and neither the General Assembly, nor any nor all other departments of the government established by this Constitution, shall ever have the authority to irrevocably give, grant, limit, or restrain this right; and all laws, grants, contracts, and all other acts whatsoever, by said government or any department thereof, to effect any of these purposes, shall be and are hereby declared to be null and void for every purpose whatsoever; and said right of taxation shall always be under the complete control of, and revocable by, the State, notwithstanding any gift, grant, or contract whatsoever by the General Assembly."

(2.) Article VII, Section 2, Paragraph 1 (Code §6553), which provides:

"All taxes shall be uniform upon the same class of subjects, and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws."

33 (3.) Article VII, Section 2, Paragraph 4 (Code §6556), which provides:

"All laws exempting property from taxation, other than the property herein enumerated, shall be void."

Defendant also claims that he is proceeding under the Act of the General Assembly approved February 28, 1874, entitled "An Act to amend the Tax Laws of this State so far as the same relate to Railroad Companies, and to define the liability of such companies to taxation, and to repeal so much of the charters of such companies, respectively, as may conflict with the provisions of this Act." Said Act being now codified in part in the Code of 1911, Section 1032, et seq., and also under Section 1087 of the Code of 1911, which is codified from the Act of October 20, 1885, and the Act of December 27, 1886, which prescribes the questions for tax payers, and also under Code Section 1008 of the Code of 1911, which is a codification of the Act of October 13, 1889, which provides for the taxation of mineral, timber interests, etc.

Said Constitution and Laws were passed long subsequent to the

charter provisions for the taxation of the Augusta & Savannah Railroad and the Southwestern Railroad Company, and the Act of 1852, authorizing the said leases, and when applied or construed so as to impair the obligation of said charter tax provisions and the obligations of said lease contracts, as they have been applied and construed by the defendant, are null and void and contrary to Article I, Section 10, Paragraph 1 of the Constitution of the United States which provides that no State shall pass any law impairing the obligation of contracts.

The said Constitution and Laws when so construed and applied as to impair the obligation of said charter tax provisions and said lease contracts are null and void and contrary to Article I, Section 3, Paragraph 2, of the Constitution of the State of Georgia (Code Section 6389), which provides that "No bill of attainder, ex post facto law, retroactive law, or law impairing the obligation of contracts, or making irrevocable grants of special privileges of immunities, shall be passed," and also contrary to Article IV, Section 2, Paragraph 6 (Code Section 6468) of the Constitution of the State of Georgia, which provides that "No provision of this Article shall be deemed, held, or taken to impair the obligation of any contract heretofore made by the State of Georgia."

29. The executions for taxes which have been issued by the Comptroller General, and those of a like nature which he is about to issue, create a lien, and a cloud upon the title of all of the property of Petitioner. If any property of Petitioner is levied on, and sold under said executions, a deed will be executed to the purchaser by the Sheriff and said deed will create a cloud upon the title of Petitioner, and will give to the defendant thereunder an apparent right in or to the property levied upon. The facts showing the invalidity of said execution and of any deed made thereunder will not and do not appear upon the face of said execution and deed, but are a matter of proof extraneous thereof, and under the laws of the State of Georgia, a purchaser asserting title thereunder would be required only to put in evidence the execution and the deed made in pursuance thereof, without showing any other of the proceedings, but the same are matters of proof to be produced by any person attacking the same. Petitioner cannot immediately or effectually maintain or protect its rights, except by staying the further progress of said executions, and any attempted sale thereunder, and the further progress of said executions should be stayed and enjoined in order to prevent a cloud being created upon the title of Petitioner in and to its property.

30. Unless said executions hereinbefore described, and other like executions for previous years which Petitioner alleges upon information and belief the Defendant will issue, are enjoined, Petitioner will be subjected to a multiplicity of suits, and the injury done your Petitioner will be irreparable in damages. Petioner is remediless in the premises under the strict rules of common law, and can have adequate relief only in a court of equity where matters of this nature are relievable, and unless a writ of injunction, as hereinbefore prayed is issued immediately the injury to Petitioner will be irreparable.

31. Petitioner expressly waives discovery, and prays:

1. That this Honorable Court will adjudge and decree that the executions heretofore issued by the Defendant, and those which are about to be issued by him of the same tenor and effect, for taxes on the interest of Petitioner in Augusta & Savannah Railroad and in the Charter Tax Lines of the Southwestern Railroad, are null and void, and of no effect upon the grounds set forth in this petition.

2. That this Honorable Court will issue a writ of perpetual injunction directed to the said William A. Wright, Comptroller General of the State of Georgia and his successors in office, and all persons who are or may hereafter be charged with the duty of assessing and collecting taxes within the State of Georgia or any political sub-division thereof, commanding and perpetually enjoining them under proper pains and penalties to desist from all efforts to collect the said taxes herein complained of and also perpetually enjoining them from attempting to enforce or collect the executions already issued, and also perpetually enjoining them from issuing, enforcing or collecting executions of a like character for taxes for the year 1914 or previous years with respect to the interest of Petitioner in Augusta & Savannah Railroad and in the Charter Tax Lines of Southwestern Railroad.

3. That this Honorable Court will issue a rule against the Defendant to show cause at a time and place to be fixed by the Court why the injunction as above prayed for on final decree should not be issued pendente lite.

36 4. That the Court will immediately issue a restraining order to remain in force until the issuance of the injunction pendente lite, and until the further order of the Court, restraining the Defendant and others as aforesaid pending the adjudication of the issues herein.

5. That process may issue against the defendant requiring him to be and appear at the next term of the Superior Court of Fulton County, to answer Petitioner on the merits of the foregoing petition.

6. That the Petitioner may have such other and further relief as the nature of the case may require.

And Petitioner will ever pray, etc.

LAWTON & CUNNINGHAM,
LITTLE, POWELL, SMITH & GOLDSTEIN,
Solicitors for Petitioner.

GEORGIA,
Chatham County:

Before me personally appeared W. A. Winburn, who being duly sworn, deposes and says he is President of Central of Georgia Railway Company, Petitioner in this case, and that the facts stated in the petition are true to the best of his knowledge, information and belief.

W. A. WINBURN.

Sworn to and subscribed before me this 29th day of October, 1915.

[SEAL.] E. B. McCUEN,
Notary Public, Chatham County, Ga.

Defendant acknowledged service of the within petition and exhibits, and waives process, copy of process, and all other and further service, this Nov. 3rd, 1915.

WM. A. WRIGHT,
Comptroller General,
By JNO. C. HART AND
SAM'L H. SIBLEY,
His Solicitors.

37 *Index to Exhibits.*

38 EXHIBIT No. 1.

Special Tax Return.

Under Protest Central of Georgia Railway Company.

SAVANNAH, GEORGIA, May 6, 1915.

On April 17, 1915, Central of Georgia Railway Company received the following communication and enclosures:

"Comptroller-General's Office, State of Georgia.

ATLANTA, April 16, 1915.

Messrs. Chas. H. Markham, President, and A. R. Lawton, Vice President, Central of Georgia Railway Co., Savannah, Ga.

DEAR SIRS: Having omitted to return for taxation for the year 1914, as required by law, the value of your leases and leased privi-

leges and other interests less than the fee owned by Central of Georgia Railway Company, in and concerning the railroads in your system of railways respectively known as the Augusta & Savannah Railroad, extending from Augusta, Ga., to Millen, Ga., and those portions of the Southwestern Railroad extending from Macon to Americus, Cuthbert to Fort Gaines, Fort Valley to Columbus, and Smithville to Cuthbert, under lease from the Augusta & Savannah Railroad Co. and the Southwestern Railroad Co. You are hereby notified that you are delinquent in respect thereto as provided by Sections
39 1055, 1056 of the Code of Georgia 1911, and you are hereby required to make a return of all of your said interests to me within 20 days, to be taxed according to the Constitution and laws of Georgia; or in default the same will be assessed from the best information obtainable, as by statute provided.

Very truly yours,

WM. A. WRIGHT,
Comptroller-General.

P. S.—For your information I enclose copy of letters this day written the Presidents respectively of the Augusta & Savannah Railroad Co. and the Southwestern Railroad Co. regarding their income tax returns."

("Enclosure.")

"Comptroller-General's Office. State of Georgia.

ATLANTA, April 15, 1915.

Mr. J. F. Minis, President Southwestern Railroad Co., Savannah, Ga.

"DEAR SIR: The income tax return made by you February 27, 1914, of the Southwestern Railroad Company was duly received. Under the decision of the Supreme Court United States your road owes income tax only on the rental you receive under the lease. The lessee will be called on to pay taxes on such value as it has under the lease.

Very truly yours,

____ ____,
Comptroller-General."

40 ("Enclosure.")

"Comptroller-General's Office, State of Georgia.

ATLANTA, April 15, 1915.

Copy.

Mr. Malcolm Maclean, President Augusta & Savannah Railroad Co., Savannah, Ga.

"DEAR SIR: The income tax return made by you February 27, 1914, was duly received. Under decision of the Supreme Court

United States your road owes income tax only on the rental you receive under the lease. The lessee will be called upon to pay taxes on such value as it has under the lease.

Very truly yours,

____ ____,

Comptroller-General."

In response to this demand and solely because thereof, and protesting that there is no warrant of law therefor Central of Georgia Railway Company makes the following return:

Value of leases and lease privileges and other interests less than the fee owned by Central of Georgia Railway Company in and concerning the railroad in its system of railways known as the Augusta & Savannah Railroad extending from Augusta, Georgia, to Millen, Georgia, under lease from Augusta & Savannah Railroad Co., One Hundred Dollars.....	$100.00

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Value of leases and lease privileges and other interests less than the fee owned by Central of Georgia Railway Company in and concerning the railroad in its system of railways known as those portions of the Southwestern Railroad, extending from Macon to Americus, Cuthbert to Ft. Gaines, Ft. Valley to Columbus, and Smithville to Cuthbert under lease from the Southwestern Railroad Co., Two Hundred Thousand Dollars	200,000.00
Aggregate of the two items Two Hundred Thousand and One Hundred Dollars.....	$200,100.00

Central of Georgia Railway Company protests, asserts and insists that no tax of any kind can lawfully be assessed against it or collected from it in respect of the alleged property covered by the Comptroller-General's demand and here valued, because:

1. There is no warrant or authority in the laws of Georgia for the assessment or the collection of taxes thereon or on any part thereof;

2. There is no warrant or authority under the laws of Georgia for severing from the fee for purpose of taxation alleged interests less than the fee and assessing or collecting taxes thereon;

3. The selection of this alleged property for assessment and taxation is part of a long-continued effort to evade, avoid and annul, and if successful would result in the evasion, avoidance and annulment of, binding contracts whereby the railroads above-mentioned are taxable only in the manner and to the extent provided in the

42 charters of "Augusta & Savannah Railroad" (Act of December 31, 1838, Acts 1838, p. 174; Act of February 16, 1856, Acts 1856, p. 185) and of "Southwestern Railroad Company" (Act of December 27, 1845, Acts 1845, pp. 116 and 132; Act of March 4,

1856, Acts 1856, p. 187), owners thereof, which contracts protect from further, other, or different taxation than is provided in said charters, the property which is the subject of the alleged interests now sought to be taxed. If there be any law of the State of Georgia which purports to authorize or sanction such further, other, or different taxation, such law is null and void under the Constitution of the United States as being a law impairing the obligation of contracts;

4. It is not and never has been the practice of the taxing authorities of Georgia to assess for taxation or to collect taxes upon alleged property interests of the class covered by the Comptroller-General's demand and here valued; and the attempt to assess this alleged property is a discrimination against Central of Georgia Railway Company and an effort to deprive it of its property without due process of law and to deny to it the equal protection of the law, in violation of the Constitution of the State of Georgia and of the Constitution of the United States;

5. Any assessment for taxation of said alleged property is without warrant or authority of law, is not prescribed by law, is an attempt to impair the obligation of contracts, is an attempt to deprive Central of Georgia Railway Company of its property without due process of law, and is an attempt to deprive Central of Georgia Railway Company of the equal protection of the law; all in violation of the laws and Constitutions of the State of Georgia and of the United States.

CENTRAL OF GEORGIA RAILWAY COMPANY,
By A. R. LAWTON, *Vice-President.*

43 STATE OF GEORGIA,
Chatham County:

Before me personally appeared Alexander R. Lawton, who being duly sworn, deposes and says that he is Vice-President of Central of Georgia Railway Company and that the foregoing statement contains by items a true and correct return of the alleged property described therein without deducting any indebtedness, that value thereof as stated is its full market value, and that the facts stated in the foregoing return under protest are true.

A. R. LAWTON.

Sworn to and subscribed before me this 6th day of May, 1915.

[SEAL.] JOHN F. LIVINGSTON,
Notary Public, Chatham County, Georgia.

44 EXHIBIT No. 2.

Comptroller General's Office.

STATE OF GEORGIA,
Fulton County:

To all and singular the Sheriffs and other lawful officers of this State, Greeting:

You are hereby commanded that of the goods and chattels of the Central of Georgia Railway Company, a corporation doing business as a common carrier in this State, you cause to be made the sum of $88.87, as its tax for the year 1914, due the State of Georgia, and interest at 7 per cent. per annum from December 20, 1914, under and by virtue of the laws of Georgia providing for the taxation of railroads in this State for State purposes. The above amount, to-wit, $88.87, is due the State for the year 1914 by the said Central of Georgia Railway Company as Lessee on its lease and lease privileges, and other interests less than the fee, in and concerning the Augusta & Savannah Railroad, now held and operated by the said Central of Georgia Railway Company as a part of its system of roads, under a lease from the said Augusta & Savannah Railroad for 100 years, with power of renewal forever. Said lease and lease privileges, and interests less than the fee having been valued by a Board of Arbitration on July 22, 1915, at the taxable value of $19,748.00, exclusive of the fee, and that you pay over said sum of money to the Comptroller General of said State, and return thereto this execution with your actings and doings entered thereon.

Witness William A. Wright, Comptroller General of said State, under his hand and the seal of said office this the 16th day of September, 1915.

WM. A. WRIGHT,
Comptroller General.

45 EXHIBIT No. 3.

Comptroller General's Office.

STATE OF GEORGIA,
Fulton County:

To all and singular the Sheriffs and other lawful officers of this State, Greeting:

You are hereby commanded that of the goods and chattels of the Central of Georgia Railway Company, a corporation doing business as a common carrier in this State, you cause to be made the sum of $4,710.64, as its tax for the year 1914, due the State of Georgia, and interest at 7 per cent. per annum from December 20, 1914, under and by virtue of the laws of Georgia providing for the taxation of railroads in this State for State purposes. The above amount, to-

wit, $4,710.64, is due the State for the year 1914 by the said Central of Georgia Railway Company as Lessee, on its lease and lease privileges, and other interests less than the fee, in and concerning the Southwestern Railroad, now held and operated by the said Central of Georgia Railway Company as part of its system of roads, under a lease from the said Southwestern Railroad for 100 years, with power of renewal forever. Said lease and lease privileges, and interests less than the fee having been valued by a Board of Arbitration on July 22, 1915, at the taxable value of $1,046,809 exclusive of the fee, and that you pay over said sum of money to the Comptroller General of said State, and return thereto this execution with your actings and doings entered thereon.

Witness William A. Wright, Comptroller General of said State, under his hand and the seal of said office this the 16th day of September, 1915.

WM. A. WRIGHT,
Comptroller General.

46 EXHIBIT No. 4.

Comptroller General's Office.

STATE OF GEORGIA,
Fulton County:

To all and singular the Sheriffs and other lawful officers of this State, Greeting:

You are hereby commanded that of the goods and chattels of the Central of Georgia Railway Company, a corporation doing business as a common carrier in this State, you cause to be made the sum of $76.60, as its tax for the year 1914 due the County of Richmond in said State, and interest at 7 per cent. per annum from Dec. 20, 1914, under and by virtue of the laws of Georgia providing for the taxation of railroads in this State for State and County purposes. The above amount, to-wit, $76.60, is due the County of Richmond for the year 1914 by the said Central of Georgia Railway Company as Lessee on its lease and lease privileges, and other interests less than the fee in and concerning the Augusta & Savannah Railroad, now held and operated by the said Central of Georgia Railway Company as a part of its system of roads, under lease from the said Augusta & Savannah Railroad for 100 years, with power of renewal forever. Said lease and lease privileges, and interests less than the fee having been valued by a Board of Arbitration on July 22, 1915, at the taxable value of $19,748.00, exclusive of the fee, and that you pay over said sum of money to the Comptroller General of said State, and return thereto this execution with your actings and doings entered thereon.

Witness William A. Wright, Comptroller General of said State, under his hand and the seal of said office this the 16th day of September, 1915.

WM. A. WRIGHT,
Comptroller General.

47 EXHIBIT No. 5.

Comptroller General's Office.

STATE OF GEORGIA,
Fulton County:

To all and singular the Sheriffs and other lawful officers of this State, Greeting:

You are hereby commanded that of the goods and chattels of the Central of Georgia Railway Company, a corporation doing business as a common carrier in this State, you cause to be made the sum of $511.87, as its tax for the year 1914 due the County of Bibb in said State, and interest at 7 per cent. per annum from December 20, 1914, under and by virtue of the laws of Georgia providing for the taxation of railroads in this State for State and County purposes. The above amount, to-wit, $511.87, is due the County of Bibb for the year 1914 by the said Central of Georgia Railway Company as Lessee on its lease and lease privileges, and other interests less than the fee in and concerning the Southwestern Railroad, now held and operated by the said Central of Georgia Railway Company as a part of its system of roads, under lease from the Southwestern Railroad for 100 years, with power of renewal forever. Said lease and lease privileges, and interests less than the fee having been valued by a Board of Arbitration on July 22, 1915, at the taxable value of $1,046,809.00, exclusive of the fee, and that you pay over said sum of money to the Comptroller General of said State, and return thereto this execution with your actings and doings entered thereon.

Witness William A. Wright, Comptroller General of said State, under his hand and the seal of said office this the 16th day of September, 1915.

WM. A. WRIGHT,
Comptroller General.

48 EXHIBIT No. 6.

Comptroller General's Office.

STATE OF GEORGIA,
Fulton County:

To all and singular the Sheriffs and other lawful officers of this State, Greeting:

You are hereby commanded that of the goods and chattels of the Central of Georgia Railway Company, a corporation doing business as a common carrier in this State, you cause to be made the sum of $50.07, as its tax for the year 1914 due the City of Augusta, Georgia, and interest at 7 per cent. per annum from December 20, 1914, under and by virtue of the laws of Georgia providing for the taxation of railroads in this State for State, County and Municipal purposes. The

above amount, to-wit: $50.07, is due the City of Augusta for the year 1914 by the said Central of Georgia Railway Company as lessee on the value of its lease and lease privileges and other interests less than the fee, in and concerning the Augusta & Savannah Railroad, now held and operated by the said Central of Georgia Railway Company as a part of its system of roads, under a lease from the Augusta & Savannah Railroad for 100 years, with power of renewal forever. Said lease and lease privileges, and interests less than the fee having been valued by a Board of Arbitration on July 22, 1915, at the taxable value of $19,748.00, exclusive of the fee, and that you pay over said sum of money to the Comptroller General of said State, and return thereto this execution with your actings and doings entered thereon.

Witness William A. Wright, Comptroller General of said State, under his hand and the seal of said office this — day of ——, 1915.

WM. A. WRIGHT,
Comptroller General.

49 EXHIBIT No. 7.

Comptroller General's Office.

STATE OF GEORGIA,
Fulton County:

To all and singular the Sheriffs and other lawful officers of this State, Greeting:

You are hereby commanded that of the goods and chattels of the Central of Georgia Railway Company, a corporation doing business as a common carrier in this State, you cause to be made the sum of $16.96, as its tax for the year 1914, due the "Local School District of Burke County" in said State, and interest at 7% per annum from December 20, 1914, under and by virtue of the laws of Georgia providing for the taxation of railroads in this State for State, County, Municipal and School District purposes. The above amount, to-wit: $16.96, is due the "Local School District of Burke County" for the year 1914 by the said Central of Georgia Railway Company as lessee on the value of its lease and lease privileges and other interests less than the fee, in and concerning the Augusta & Savannah Railroad, now held and operated by the said Central of Georgia Railway Company as a part of its system of roads, under a lease from the Augusta & Savannah Railroad for 100 years, with power of renewal forever. Said lease and lease privileges, and interests less than the fee having been valued by a Board of Arbitration on July 22, 1915, at the taxable value of $19,748.00, exclusive of the fee, and that you pay over said sum of money to the Comptroller General of said State, and return thereto this execution with your actings and doings entered thereon.

Witness William A. Wright, Comptroller General of said State,

under his hand and the seal of said office this the — day of ——, 1915.

WM. A. WRIGHT,
Comptroller General.

50 EXHIBIT No. 8.

List of Executions Issued and About to be Issued by the Comptroller General of Georgia against Central of Georgia Railway Company for Taxes for the Year 1914.

1. In respect of leasehold interests in Augusta & Savannah Railroad:

State of Georgia	$88.87
County of Richmond	76.60
" " Jenkins	42.07
" " Burke	50.89
City of Augusta	50.07
" " Waynesboro	2.21
" " Millen	2.77
Local School District, Burke County	16.96
" " " Jenkins County	6.23
Total	$336.67

2. In respect of leasehold interest in Charter Tax Lines of Southwestern Railroad Company:

State of Georgia	$4,710.64
County of Bibb	511.87
" " Houston	1,313.89
" " Macon	1,464.84
" " Sumter	585.19
" " Lee	266.60
" " Terrell	821.83
" " Randolph	505.62
City of Macon	67.10
" " Ft. Valley	135.85
" " Marshalville	53.15
" " Montezuma	79.72
" " Oglethorpe	128.36
" " Americus	239.17
" " Smithville	44.27

51

City of Bronwood	$53.15
" " Dawson	88.66
" " Cuthbert	102.68
Local School District, Terrell County	251.77
" " " Sumter County	79.73
" " " Randolph County	144.46

" " "	Macon County "Cut Off"	43.05
" " "	Houston County	164.24
" " "	Lee County	22.22
County of Houston		287.02
" " Crawford		462.09
" " Taylor		1,466.97
" " Talbot		1,123.19
" " Muscogee		565.80
City of Columbus		132.88
" " Geneva		15.95
Junction City		30.03
City of Butler		106.30
" " Box Springs		3.19
Local School District, Reynolds		132.88
" " "	Zenith	73.35
" " "	Geneva	69.10
" " "	Houston County	35.88
County of Randolph		379.87
" " Clay		628.96
City of Coleman		26.57
" " Ft. Gaines		50.50
Local School District, Randolph County		108.53
Total		$17,577.12

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Exhibit No. 9.

Lease.

Augusta & Savannah Railroad—Central Railroad & Banking Company of Georgia.

May 1, 1862.

This indenture, made the first day of May, in the year of our Lord one thousand eight hundred and sixty-two, between the Augusta and Savannah Railroad, formerly the Augusta and Waynesboro Railroad, of the one part, and the Central Railroad and Banking Company, of Georgia, of the other part, witnesseth, that,

Whereas, in and by an act of the General Assembly of the State of Georgia, passed on the twenty-second day of January, one thousand eight hundred and fifty-two, express authority was granted to the said Central Railroad and Banking Company of Georgia, to lease and work the Augusta and Waynesboro' Railroad, and all roads connected with the Central Railroad; and,

Whereas, Also, it is provided in the charter of the said Augusta and Savannah Railroad, formerly the Augusta and Waynesboro' Railroad, that said Company may rent or farm out all, or any part

of their exclusive right of transportation of freight or conveyance of passengers to any other Company; and

Whereas, The said The Augusta and Savannah Railroad has agreed to lease to the said The Central Railroad and Banking Company of Georgia, their railroad, leading and running from Millen to Augusta, with all their locomotive engines, cars and material of any kind and description, and their right to carry freight and passengers, and to collect the money therefor. Said lease to begin the day of the date of these presents, and to run and continue during the whole charter of the said Augusta and Waynesboro' and of the said Augusta and Savannah Railroad. That is to say, in
53 perpetuity, at a rent of seventy-three thousand dollars per annum, payable, as follows: The rent for the month of May to be paid on the first day of June next, and then semi-annually. The first semi-annual payment to be on the first Monday in December next, the next payment to be on the first Monday in June, eighteen hundred and sixty-three, and thereafter on the said first Mondays in December and June.

Now this indenture witnesseth, that the said, The Augusta and Savannah Railroad, formerly the Augusta and Waynesboro' Railroad, hath leased and let, and by these presents doth lease and let and grant unto the said, The Central Railroad and Banking Company of Georgia, all and singular the railroad leading and running from the Central Railroad at Millen to the City of Augusta, together with all the engines, locomotive or stationary, cars, repair cars, wells, cisterns, sidings, depots, stations, warehouses, fixtures, rights, members and appurtenances, and privileges of every kind and nature whatsoever.

To have and to hold the said railroad and appurtenances unto the said, The Central Railroad and Banking Company of Georgia, for, during and until the full term and end of the charter of the Augusta and Waynesboro' Railroad, and of the Augusta and Savannah Railroad, that is to say, in perpetuity free and clear of every claim or demand for right of way, for damages or other cause which may at this day exist against the said The Augusta and Savannah Railroad, it being understood that a forfeiture of the charter for any act or thing done or suffered by the said The Central Railroad and Banking Company of Georgia, shall not terminate the lease or affect the relations of the contracting parties toward each other.

And the said The Central Railroad and Banking Company of Georgia hereby covenants, agrees and promises to pay rent for said railroad and appurtenances, as above let, unto the said
54 Augusta & Savannah Railroad, as follows: The rent for May to be paid on the first of June next, and thereafter, thirty-six thousand five hundred dollars on the first Monday in December next, and a like sum on the first Monday in June, eighteen hundred and sixty-three, and a like sum on every first Monday in December and June during and to the end of this lease, and, further, to grant to as long as their organization is kept up, free travel between the the Directors and President of the Augusta and Savannah Railroad,

cities of Savannah and Augusta, and further, to pay all taxes that may legally be imposed by the Confederate States of America on said railroad leased as aforesaid, the tax imposed by the State of Georgia to be paid by the said The Augusta and Savannah Railroad.

And the said The Central Railroad and Banking Company of Georgia hereby agrees to indemnify the said The Augusta and Savannah Railroad against all claims for loss or damage to stock or to persons during the continuance of this lease.

In witness whereof, the Augusta and Savannah Railroad hath hereto caused to be affixed its corporate seal with the signature of its President, and the said The Central Railroad and Banking Company of Georgia hath caused to be affixed its corporate seal, with the signature of its President, in virtue of resolutions passed for that purpose by the respective Boards of Directors the day and year first above written.

[Seal A. & S. R. R.]

FRANCIS T. WILLIS,
President Augusta and Savannah Railroad.

[Seal C. R. R. & B. Co.]

R. R. CUYLER,
President C. R. R. and Banking Co. of Ga.

Attest:
GEO. N. CUYLER.

55 This Company having leased the Augusta and Savannah Railroad, as evidenced by a deed bearing date May 1st, 1862, with the signatures of the President and corporate seal of each Company affixed, the seal of the Central Railroad and Banking Company of Georgia, being attested by Geo. A. Cuyler, Cashier, but neither of the signatures being witnessed in the manner required by law, so as to have the paper duly recorded, and the (then) President and Cashier of this Company having since departed this life,

Resolved, That the President of this Company be, and he is hereby, authorized to make a formal acknowledgment on said lease, in the presence of two witnesses; and when the same shall be properly acknowledged by the Augusta and Savannah Railroad to have it duly recorded in Chatham County and in the several counties through which the Augusta and Savannah Railroad runs.

I certify the above preamble and resolution to be a true extract from the minutes of this Company of this date.

[SEAL.] T. M. CUNNINGHAM, *Cashier.*

At a meeting of the Board of Directors of the Augusta and Savannah Railroad Company, held January 3d, 1887, the following resolution was offered by Mr. Frank H. Miller, and unanimously passed:

Whereas, On the 1st day of May, 1862, under authority contained in its charter, the Augusta and Savannah Railroad Company, pursuant to the Act of the General Assembly of January 22d, 1852,

leased in perpetuity its railroad to the Central Railroad and Banking Company, which corporation took possession under the lease and is still in possession of the same;

56 And, whereas, The said lease was executed without an attesting clause, and has never been placed upon the record of any County through which the road passes, or in which the lessee does business;

Resolved, That the President of the corporation be authorized to reacknowledge the execution of said lease in the presence of two witnesses, one of whom shall be a Notary Public or other judicial officer, and be requested to obtain a similar acknowledgment from the Central Railroad and Banking Company as to its execution of the said lease, and that thereafter the said President of this corporation cause the lease so acknowledged to be recorded in the Counties of Chatham, Burke and Richmond upon the registry of deeds for each of said Counties.

I certify the above and foregoing to be a true extract from the minutes, as above stated.

JNO. M. HOGAN, *Secretary.*

Whereas, On the first day of May, A. D. 1862, the within indenture of lease was executed and delivered between the Augusta and Savannah Railroad Company of the first part, and the Central Railroad and Banking Company of Georgia of the second part, as will appear by reference to the County Records of Chatham County, Book 4 U's, folios 62 and 63, and,

Whereas, Said lease was not executed in conformity with the Statutes for the registration and recording of such instruments;

Now, therefore, know all men by these presents, That the Augusta and Savannah Railroad Company and the Central Railroad and Banking Company of Georgia, each for itself and on its own

57 behalf, does hereby acknowledge and declare the said lease to be the act and deed of each of them, and does hereby re-execute, sign, seal and deliver the same.

In witness whereof, the said parties have, by virtue of resolutions of their respective Boards of Directors, as hereto attached, caused these presents to be signed by their respective Presidents, and their corporate seals, properly attested, to be hereto affixed this thirtieth day of June, A. D. 1887.

Signed, sealed and delivered in presence of:

THE CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA,
By E. P. ALEXANDER, *President.*

Witness as to E. P. Alexander, President:

A. J. ORME.
DAVIS FREEMAN,
Notary Public C. C., Ga.

Attest:

T. M. CUNNINGHAM,
Cashier.

[Seal of Co.]

THE AUGUSTA AND SAVANNAH RAILROAD,
By W. S. LAWTON, *President.*

Witness as to W. S. Lawton, President:

H. H. HULL.
DAVIS FREEMAN,
Notary Public C. C., Ga.

Attest:

JNO. M. HOGAN,
Secretary.

[Seal of Co.]

58 EXHIBIT No. 10.

Lease.

Southwestern Railroad—Central Railroad and Banking Company of Georgia.

June 24, 1869.

This Indenture, made the twenty-fourth day of June, eighteen hundred and sixty-nine, between the Southwestern Railroad Company, of the first part, and The Central Railroad and Banking Company of Georgia, of the second part, both of said parties being corporations under the laws of the said State of Georgia.

Whereas, By an Act of the Legislature of the State of Georgia, approved the 22d day of January, A. D. 1852, the said The Central Railroad and Banking Company of Georgia was authorized to lease and work for such time and on such terms as might be agreed on by the parties interested, The Southwestern Railroad and such other railroads as then connected, or might thereafter connect with the Central Railroad, and the said The Southwestern Railroad Company was authorized to lease its railroad to the said The Central Railroad and Banking Company of Georgia for such term of time and on such other terms as it might deem best.

Now this indenture witnesseth, That the said The Southwestern Railroad Company, for and in consideration of the covenants, conditions and agreements hereinafter set forth, on the part of the said The Central Railroad and Banking Company of Georgia, to be performed and kept, hath demised, leased and to farm let, and

by these presents doth demise, lease, and to farm let all the railroad of the said The Southwestern Railroad Company, leading and running from Macon, in the said State of Georgia, to Columbus, Eufaula, Fort Gaines, and Albany in all its branches, as the same is now constructed, and with all the extensions thereof to other points
59 which may hereafter be constructed, including the right of way, roadbed, depots, stations, warehouses, wells, cisterns, engines, cars, fixtures, machinery and all property whatsoever, real and personal, connected with and appertaining to the said Southwestern Railroad and owned by the said party of the first part, together with the rights, members and appurtenances to the same belonging, or in any manner appertaining, unto the said The Central Railroad and Banking Company of Georgia, to have and to hold the same, and every part thereof, with the appurtenances, unto the said party of the second part from the first day of December, eighteen hundred and sixty-nine, for and during the entire continuance of the corporate existence of the said The Southwestern Railroad Company under its present charter, or under any amendments or extensions thereof, that may hereafter be made. Until the said first day of December next, the said The Southwestern Railroad Company is to work, manage and control its said railroad as heretofore, and to receive all the earnings thereof, to pay all debts and claims against it which shall become due before that day, whether the same consist of the current and ordinary expenses of the said Company, or of interest on its funded debt; to dispose of the residue of its said earnings for dividends to its stockholders and other purposes, at its pleasure; to preserve its present permanent property and assets unimpaired, and to deliver the same, or account for the proceeds of such part thereof as it may be found necessary to dispose of, to the said The Central Railroad and Banking Company of Georgia, on the day aforesaid, and on that day to give to the said The Central Railroad and Banking Company of Georgia exclusive possession and control of the said Southwestern Railroad and its appurtenances, and all other property of the said party of the first part, and permit it to exercise through its proper officers thenceforth all rights, privileges and control over the same, which the said party of the first part has, or might exercise over and with regard to the same if this demise were not made, except as
60 to the organization of the said party of the first part, and also to receive, control and dispose of all the earnings of the said Southwestern Railroad Company, and to merge the same with the earnings of the said The Central Railroad and Banking Company of Georgia, and to decide what dividends shall be declared therefrom.

And the said the Central Railroad and Banking Company of Georgia hereby covenants and agrees to and with the said The Southwestern Railroad Company, that during the months of June and December in every year during the continuance of the term hereby granted, it will declare and pay to the stockholders of the said The Southwestern Railroad Company dividends which shall bear to the dividends declared and paid to its own stockholders the

ratio of eight to ten—that is to say, eight dollars to each share of Southwestern Railroad stock for every ten dollars declared and paid to each share of its own stock, and that no semi-annual dividend so declared and paid to the stockholders of the Southwestern Railroad Company shall be less than at the rate of 7 per centum per annum on the par value of their stock; and that whenever any stock dividend or division of assets or accumulations, shall be declared, paid or made to the stockholders of the said The Central Railroad and Banking Company of Georgia, a similar dividend or distribution shall be paid and made to the stockholders of the Southwestern Railroad in the same proportion of eight to ten, and that all such dividends and distributions of every sort shall be paid to the stockholders of the Southwestern Railroad Company at Macon and Savannah, as the said Company has heretofore paid its dividends, and be free of all taxes to the stockholders.

And the said The Central Railroad and Banking Company of Georgia hereby further covenants and agrees to and with the said The Southwestern Railroad Company, that from and after the said first day of December next, it will pay the current expenses
61 incident to the working and management of the said Southwestern Railroad, and all debts and claims against the said The Southwestern Railroad Company, which shall become due after that day; and all bonds and interest upon bonds of said company which shall become due after that day, including the bonds and the interest upon the bonds of the Muscogee Railroad Company, which said bonds and interest upon bonds shall be paid on presentation of the said coupons, at the times and places specified therein.

And the said The Central Railroad and Banking Company of Georgia hereby further covenants and agrees to pay the salaries of the President and of the Secretary and Treasurer of the said Southwestern Railroad Company during the continuance of the said lease, reserving to itself the right to fix the amount of the said salaries, with the restriction that the aggregate amount thereof shall not be less than four thousand dollars per annum; and that it will also provide and furnish, at its own expense, all necessary stock, account and transfer books, and all necessary stationery, and offices for the said President and Secretary and Treasurer, and pay all proper expenses incident to the meetings of the Board of Directors of the said The Southwestern Railroad Company, and permit the President and Directors and the Secretary and Treasurer of the said company to travel on both roads free of charge in the same manner as the corresponding officers of the said The Central Railroad and Banking Company of Georgia; and that it will provide for the transfer of stock in the said The Southwestern Railroad Company, both at Macon and Savannah, as that company has heretofore done.

And the said The Central Railroad and Banking Company of Georgia hereby further covenants and agrees to keep in as good order and repair as when it shall receive possession and control of

the same, the said Southwestern Railroad and its rolling
62 stock and other appurtenances, and to pay all taxes on the property of the said The Southwestern Railroad Company, during the continuance of this lease; and that in case it shall fail to pay any dividend to the stockholders of The Southwestern Railroad Company, or any bond, or the interest upon any bond, within six months after the same shall become due and payable as hereinbefore provided, and be demanded by the person or persons entitled to receive the same. It shall then be lawful for the Board of Directors of the said The Southwestern Railroad Company to terminate this lease, and to enter upon and resume possession of its said railroad with the appurtenances and all other its property hereby demised; and from thenceforth this indenture and the estate, rights and privileges hereby granted, and every clause and article herein contained shall cease, determine and be void; and the said The Central Railroad and Banking Company of Georgia will thereupon deliver immediate and peaceable possession of the said Southwestern Railroad, its rolling stock and appurtenances and other property hereby demised, in as good order as it received the same, replacing such as shall have been consumed by use or otherwise disposed of, with other similar property of equal value.

And the said The Central Railroad and Banking Company of Georgia, hereby further covenants and agrees to maintain its present permanent property and assets, unimpaired in amount and value until the said first day of December next.

And the said The Southwestern Railroad Company hereby covenants and agrees to conform in all its financial operations after the date of these presents to the views and wishes of the Board of Directors of The Central Railroad and Banking Company of Georgia, so far as relates to the present funded debt of the former company in renewing and issuing bonds and otherwise; and
63 that it will contract no new obligations, and create no new incumbrances upon its said railroad or appurtenances, or any other of its property, and make no extension of its said railroad without the assent of the Board of Directors of the said The Central Railroad and Banking Company of Georgia.

And both parties hereby covenant and agree to, and with each other, that they will respectively at any and all times, after the date of these presents, and during the continuance of this lease, make, execute and deliver such other conveyances, transfers and instruments in writing, and do such other things as shall be considered by counsel, learned in the law, necessary to give full effect to this lease or any part thereof.

It is understood that nothing herein contained is in any wise to effect the corporate character or existence of the said The Southwestern Railroad Company; but that it is to maintain its corporate organization, not only until the first day of December next, but at all times thereafter during the continuance of its charter, whether as now framed, or as it may be hereafter extended or amended to the fullest extent necessary to preserve its said charter and protect the rights of its stockholders.

It witness whereof, the President of the said The Southwestern Railroad Company, being thereunto authorized by a resolution of the Board of Directors of said company adopted on the twenty-fourth day of June, A. D. 1869, hath hereunto set his hand and the seal of said company, attested by its secretary; and the President of the said The Central Railroad and Banking Company of Georgia, by virtue of a resolution of the Board of Directors of said company, adopted on the 22d day of June, A. D. 1869, hath hereunto
64 set his hand and the seal of said company, attested by its Cashier, interchangeably on the day and year first above written.

WM. S. HOLT,
President Southwestern R. R. Co.

[Seal of S. W. R. R. Co.]

Attest:

JOHN T. BOIFEUILLET,
Secretary.

Signed, sealed and delivered in presence of

W. S. BRANTLEY.
WM. K. DE GRAFFENREID,
Notary Public, Bibb County, Ga.

WILLIAM M. WADLEY,
President Central R. R. & B. Co. of Ga.

[Seal of The C. R. R. & B. Co.]

Attest:

T. M. CUNNINGHAM, *Cashier.*

Witness to the signatures of Wm. M. Wadley, President, and T. M. Cunningham, Cashier:

GEO. W. LAMAR, JR.
R. W. ADAMS,
Notary Public C. C., Ga.

65 EXHIBIT No. 11.

Lease.

Augusta and Savannah Railroad—Central of Georgia Railway Company.

October 24, 1895.

This Indenture, made this 24th day of October, one thousand eight hundred and ninety-five, between the Augusta and Savannah Railroad, of the first part, and the Central of Georgia Railway Company, of the second part, both of said parties being corporations under the laws of the State of Georgia.

Whereas, the railroad of the Central Railroad and Banking Company of Georgia was heretofore sold under decree of foreclosure at a certain judicial sale on the seventh day of October, 1895, at the City of Savannah, Georgia.

And whereas, the purchasers and their associates have formed and created under the General Railroad Law of Georgia, approved December 17th, 1892, and the amendments thereto, the new corporation known as the Central of Georgia Railway Company, which has acquired title under such sale to the said railroad of the Central Railroad and Banking Company of Georgia;

And whereas, by the express terms of the said General Railroad Act, approved December 17th, 1892, and the amendments thereto, said corporation so formed by the parties acquiring title at said sale is entitled to exercise and enjoy the same rights, privileges, grants, franchises, immunities and advantages which belonged to and were enjoyed by the Central Railroad and Banking Company of Georgia;

66 And whereas, by an Act of the Legislature of the State of Georgia, approved the 22nd day of January, A. D., 1852 the Central Railroad and Banking Company of Georgia was authorized to lease and work for such time and on such terms as might be agreed on by the parties interested, the Augusta and Waynesboro Railroad (now the Augusta and Savannah) and such other railroads as then connected or might thereafter connect with the Central Railroad and the said Augusta and Waynesboro (now Augusta and Savannah) Railroad was authorized to lease its railroad to the said The Central Railroad and Banking Company of Georgia, for such period of time and on such other terms as it might deem best;

And whereas, On May 1st, 1862, the said Augusta and Savannah Railroad executed and delivered under its corporate seal a perpetual lease of all and singular its railroad, appurtenances, equipment and franchises to the said Central Railroad and Banking Company of Georgia, under and by authority of the said act of the Legislature of the State of Georgia, of January 22nd, 1852, last aforesaid, and that contained in the charter of the said Augusta and Waynesboro (now

Augusta and Savannah) Railroad, and under which lease said Central Railroad and Banking Company of Georgia has since hitherto held possession of and operated the said Augusta and Savannah Railroad.

And whereas, The said leasehold estate of the said Central Railroad and Banking Company of Georgia in and to the said Augusta and Savannah Railroad under the said lease aforementioned, has by force of and under judicial proceedings passed to and become vested in the said Central of Georgia Railway Company, party of the second part;

And whereas, The said party of the second part, having become so vested with the said leasehold estate, is desirous to renew the
67 said lease in the manner hereinafter more specifically set forth, to which modification and renewal the said Augusta and Savannah Railroad, party of the first part, has assented and agreed;

And whereas, the party of the second part was organized under and by virtue of the laws of the State of Georgia, and is by its incorporation vested with the charter rights of the original Central Railroad and Banking Company of Georgia, including the powers vested by the Act of January 22nd, 1852, as well as all the powers, liberties and franchises granted by the General Railroad Act of December 17th, 1892, and all acts amendatory thereof and supplemental thereto;

Now, this indenture witnesseth: That the said the Augusta and Savannah Railroad, hereinafter called the lessor, for and in consideration of the covenants, conditions and agreements hereinafter set forth on the part of the said the Central of Georgia Railway Company, hereinafter called the lessee, hath demised and to farm-let, and by these presents doth demise, lease and to farm-let, all the railroad of the said lessor leading and running from Millen to Augusta in the State of Georgia, including the right of way, road-bed, depots, stations, warehouses, wells, cisterns, engines, cars, fixtures, machinery and all property whatsoever real and personal, connected with and appertaining to the said lessor, or owned by the said lessor, together with the rights, members and appurtenances to the same belonging or in any manner appertaining, unto the said lessee.

To have and to hold the same and every part thereof, with the appurtenances unto the said lessee from the first day of November, eighteen hundred and ninety-five, for the full term of one hundred and one years, and renewable in like periods upon the same terms forever. The right to renewals shall be in conformity to the laws authorizing it, and for the period that the corporate existence of the lessee may be continued.

68 Upon the said first day of November, eighteen hundred and ninety-five, the said lessor shall give to the said lessee exclusive possession and control of the said lessor's railroad and its appurtenances and all other property of the said lessor, and permit it to exercise through its proper officers henceforth all its franchises and all rights, privileges and control over the same which the said lessor has or might exercise over and with regard to the same if this demise were not made, except as to the organization of the lessor; and also

to receive, control and dispose of all the earnings of the said lessor's road and to merge the same with the earnings of the said lessee.

And the said lessee hereby covenants and agrees to and with the said lessor, that during each and every year of the continuance of the term hereby granted, and any and all renewals thereof, it will pay to the said lessor the sum of fifty-one thousand one hundred and forty-five ($51,145) dollars, being equal to five per centum upon the amount of the capital stock of the said lessor, now outstanding, the first payment hereunder to be made on the first day of January, A. D. 1896, and payments thereafter to be made semi-annually on the first days of January and July in each and every year.

And the said lessee hereby further covenants and agrees to and with the said lessor, that from and after the first day of November, A. D. 1895, it will pay the current expenses incident to the working and management of the said lessor's railroad, and all debts and claims against the said lessor company which shall, either by the action of the said lessee, its officers, agents or employees, or by authority or assent of the said lessee, become due; also all federal, State, county or municipal taxes and assessments, ordinary or extraordinary, then resting or thereafter to be lawfully imposed upon the lessor or its property under its charter and the Constitution and laws of the State of Georgia or of the United States; also all damages to persons or property adjudged or decreed against the lessor as owner of
69 the property and franchises herein demised, including those adjudged or decreed against the lessee which may arise, grow out of or inure from the possession, use or operation of the lessor's property, or any of its rights, privileges or franchises whatsoever; also, to assume, arrange for, pay off and liquidate, without expense or liability of any sort to the lessor, all lawful claims or liabilities whatsoever in suits or actions now pending against the lessor, or which may at any time hereafter be brought against it for anything done whilst being operated under the lease to the Central Railroad and Banking Company of Georgia, dated May 1st, 1862, and particularly the suits and actions brought against the lessor in the Circuit Court of the United States for the Southern District of Georgia, or in the State Courts of Richmond and Burke Counties, whether brought against the said lessor or the Receiver of the Central Railroad and Banking Company of Georgia for anything done whilst they or the said Central Railroad and Banking Company of Georgia were operating the road of the said lessor. It is the intention of this contract that the lessor shall have and receive during the period of this lease, and of any and all renewals thereof, the amount of said rental free from and without any deduction whatever. But nothing herein contained shall be so construed as to make the lessee, or any of its officers, agents or employees, in any way liable or responsible for any indebtedness or liability which may be created by, or arise from the acts of omission or commission of any Director or other officer or employee of the lessor, unless done at the express instance or request or assent of the lessee; but neither party to this contract shall in any manner become liable for the acts of the other party, except in so far as they herein expressly authorize it.

In addition to the amount hereinbefore covenanted to be paid as rental, the lessee will further pay to the lessor an amount to pay the salaries of the President and of the Secretary and Treasurer of the lessor during the continuance of this lease, and all renewals thereof, provided such sums shall not exceed the sum of two thousand
70 dollars in any one year; and further amounts sufficient to provide and furnish to the lessor all necessary stock, account and transfer books, stationery and offices for the President and Secretary and Treasurer, and all necessary expenses connected with the transfer of stock of the lessor and the advertisement for and payment of its dividends and incident to the meetings of the Board of Directors of the lessor, or of its stockholders; and further, that it will give to the President and Directors, and to the Secretary and Treasurer of the said lessor, free transportation over the railroads owned or leased by the lessee, in the same manner as free transportation shall be accorded to the corresponding officers of the lessee.

And the said lessee hereby further covenants and agrees to keep in as good order and repair as when it shall receive possession and control of the same, the said lessor's railroads and other property and appurtenances, and in case it shall fail to pay any semi-annual amount of the rent as hereinbefore fixed, on the first days of January or July in any year for the space of six months after the same shall become due and payable as hereinbefore provided, and be demanded by the lessor, it shall then be lawful for the Board of Directors of the said lessor to terminate this lease and enter upon and resume possession of said railroad with the appurtenances and all other of its property hereby demised, and from thenceforth this indenture and the estate, rights and privileges hereby granted and every clause and article herein contained shall cease, determine and be void. And the said lessee will thereupon deliver immediate and peaceable possession to the said lessor of said railroad and other property and appurtenances hereby demised in as good order as it received the same, replacing such as shall have been consumed by use or otherwise disposed of with other similar property of equal value.

And both parties hereto hereby covenant and agree to and with each other that they will respectively, at any and all times
71 after the date of these presents and during the continuance of this lease and all renewals thereof, make, execute and deliver such other conveyances, transfers and instruments in writing and do such other things as shall be considered by counsel learned in the law necessary to give full effect to this lease or any part thereof.

It is understood that nothing herein contained is in any wise to affect the corporate character or existence of the said lessor, but that it is to maintain its corporate organization during the continuance of its charter, whether as now framed or as it may hereafter be extended or amended, to the fullest extent necessary to preserve its charter and protect the rights of its stockholders.

And the lessee hereby expressly covenants to and with the lessor that it will do and perform all things necessary to the maintenance of the franchise of the said lessor and the performance of all its duties to the State and the public, save and except the maintenance

of the organization of the lessor, hereinbefore provided for; and that it will not do, or permit to be done, or omit, or permit to be omitted, any act or thing necessary to be done by the lessor for the maintenance of its charter and franchise.

It is further agreed that this new contract of lease shall operate and be taken as to the powers, duties and liabilities of the parties hereto, and in all other respects as a substitute for the original lease contract of May 1st, 1862 which original contract it is hereby agreed is no longer operative or in existence.

In witness whereof, The President of the said lessor, being thereunto authorized by resolution of its Board of Directors adopted on the 24th day of October, 1895, has hereunto affixed the seal of the said corporation and caused the same to be signed by its President and countersigned by its Secretary, and the said lessee has by like resolution of its Board of Directors adopted on the 17th day of
72 October, 1895, hereunto affixed its corporate seal and caused the same to be signed by its President and countersigned by its Secretary in duplicate the day and years first above written.

A. R. LAWTON,
Pres. A. & S. R. R.

H. H. HULL,
[SEAL.] *Sec. A. & S. R. R.*

Signed, sealed and delivered in the presence of us by the lessor.

WILLIAM H. QUINAN,
MICHAEL T. QUINAN,
Notary Public, Chatham Co., Ga.

[Seal M. T. Quinan, Jr., Notary Public, Chatham Co., Ga.]

CENTRAL OF GEORGIA RAILWAY COMPANY,
By R. L. ANDERTON, JR.,
1st Vice-President.

Attest:

[SEAL.] W. E. FINDLEY, *Secretary.*

Signed, sealed and delivered in the presence of us by the lessee.

W. A. C. EWEN,
WILLIAM H. CLARKSON,
Commissioner for the State of Georgia in New York.

[Seal William H. Clarkson, a Commissioner for the State of Georgia in the State and City of New York.]

73 EXHIBIT No. 12.

Lease.

Southwestern Railroad Company—Central of Georgia Railway Company.

October 17, 1895.

This Indenture, made the 17th day of October, one thousand eight hundred and ninety-five, between the Southwestern Railroad Company, of the first part, and The Central of Georgia Railway Company, of the second part, both of said parties being corporations under the laws of the State of Georgia.

Whereas, the railroad of the Central Railroad and Banking Company of Georgia was heretofore sold under decree of foreclosure at a certain judicial sale on the seventh day of October, 1895, at the City of Savannah, Georgia.

And Whereas, the purchasers and their associates have formed and created under the General Railroad Law of Georgia, approved December 17, 1892, and the amendments thereto, the new corporation known as the Central of Georgia Railway Company, which has acquired title under such sale to the said railroad of the Central Railroad and Banking Company of Georgia;

And Whereas, by the express terms of the said General Railroad Act, approved December 17th, 1892, and the amendments thereto, said corporation so formed by the purchasers acquiring title at said sale is entitled to exercise and enjoy the same rights, privileges, grants, franchises, immunities and advantages which belonged to and were enjoyed by the Central Railroad and Banking Company of Georgia;

And Whereas, by an Act of the Legislature of the State of Georgia, approved the 22nd day of January, A. D., 1852, the
74 Central Railroad and Banking Company of Georgia was authorized to lease and work for such time and on such terms as might be agreed on by the parties interested, the Southwestern Railroad and such other railroads as then connected or might thereafter connect with the Central Railroad, and the said Southwestern Railroad Company was authorized to lease its railroad to the said Central Railroad and Banking Company of Georgia for such period of time and on such terms as it might deem best;

And Whereas, on June 24th, 1869, the said Southwestern Railroad Company executed and delivered under its corporate seal a perpetual lease of all and singular its railroad, appurtenances, equipment and franchises to the said Central Railroad and Banking Company of Georgia, under and by authority of the said act of the Legislature of the State of Georgia of January 22nd, 1852, last aforesaid, under which lease said Central Railroad and Banking

Company of Georgia has since hitherto held possession of and operated the said Southwestern Railroad;

And Whereas, the said leasehold estate of the said Central Railroad and Banking Company of Georgia in and to the said Southwestern Railroad under the said lease aforementioned has by force of and under judicial proceedings passed to and become vested in the said Central of Georgia Railway Company, party of the second part;

And Whereas, the said party of the second part, having become so vested with the said leasehold estate, is desirous to hereby modify and renew the said lease in the manner hereinafter more specifically set forth, to which modification and renewal the said Southwestern Railroad Company, party of the first part, has assented and agreed;

And Whereas, the party of the second part was organized under and by virtue of the laws of the State of Georgia, and is by such incorporation vested with the charter rights of the original
75 Central Railroad and Banking Company of Georgia, including the powers vested by the Act of January 22, 1852, as well as all the powers, liberties and franchises granted by the General Railroad Act of December 17th, 1892, and all Acts amendatory thereof and supplemental thereto;

Now, This Indenture Witnesseth, That the said Southwestern Railroad Company, hereinafter called the lessor, for and in consideration of the covenants, conditions and agreements hereinafter set forth on the part of the said Central of Georgia Railway Company, hereinafter called the lessee, hath demised and to farm-let, and by these presents doth demise, lease and to farm-let, all the railroad of the said lessor leading and running from Macon, in the State of Georgia, to Columbus, Fort Gaines, Albany, Blakely and Perry, in the State of Georgia, and to Columbia and Eufaula, in the State of Alabama and all its branches, as the same are now constructed, and with the extensions thereof, to other points which may hereafter be constructed, including the right of way, roadbed, depots, stations, warehouses, wells, cisterns, engines, cars, fixtures, machinery and all property whatsoever real and personal, connected with and appertaining to the said lessor, or owned by the said lessor, together with the rights, members and appurtenances to the same, belonging, or in any manner appertaining, unto the said lessee.

To Have and to Hold the same and every part thereof, with the appurtenances, unto the said lessee from the first day of November, Eighteen hundred and ninety-five, for the full term of One hundred and one years, and renewable in like periods upon the same terms forever. The right to renewals shall be in conformity with the laws authorizing it, and for the period that the corporate existence of the lessee may be continued.

Upon the said first day of November, 1895, the said lessor shall give to the said lessee exclusive possession and control of
76 the said lessor's railroad and its appurtenances and all other property of the said lessor, and permit it to exercise through its proper officers henceforth all its franchises and all rights, privileges and control over the same which the said lessor has or

might exercise over and with regard to the same if this demise were not made, except as to the organization of the lessor and also to deceive, control and dispose of all the earnings of the said lessor's road and to merge the same with the earnings of the said lessee.

And the said lessee hereby covenants and agrees to and with the said lessor that during each and every year of the continuance of the term hereby granted, and any and all renewals thereof, it will pay to the said lessor the sum of Two hundred and fifty-nine thousand, five hundred and fifty-five ($259,555) Dollars, being equal to five per centum upon the amount of the capital stock of the said lessor now outstanding, the first payment hereunder to be made on the first day of January, A. D., 1896, and payments thereafter to be made semi-annually on the first days of January and July in each and every year.

And the said lessee hereby further covenants and agrees to and with the said lessor that from and after the first day of November, A. D., 1895, it will pay the current expenses incident to the working and management of the said lessor's railroad, and all the debts and claims against the lessor company which shall, either by the action of the said lessee, its officers, agents or employees, or by authority or assent of the said lessee, become due; also all federal, state, county or municipal taxes and assessments, ordinary or extraordinary then resting or thereafter to be lawfully imposed upon the lessor or its property under its charter and the Constitution and Laws of the State of Georgia or of the United States; also all damages to person or property adjudged or decreed against the lessor as owner of the property and franchises herein demised, including those adjudged or decreed against the lessee which may arise, grow out of or inure from the possession, use or operation of the lessor's property, or any of its rights, privileges or franchises whatsoever; also to assume, arrange for, pay off and liquidate, without expense or liability of any sort to the lessor, all lawful claims or liabilities whatsoever in suits or actions now pending against the lessor, or which may at any time hereafter be brought against it for anything done whilst being operated under the lease to the Central Railroad and Banking Company of Georgia, dated June 24th, 1869, and particularly the suits and actions brought against the lessor in the Circuit Court of the United States, for the Southern District of Georgia, in the Eastern and Western Divisions thereof, in favor of the Farmers' Loan & Trust Company, as Trustee, to foreclose certain so-called tripartite bonds of the lessor and other companies, and also the suit of the Mutual Life Insurance Company and others, holders of the bonds of the Montgomery and Eufaula Railway Company to enforce a guaranty of the lessor. It is the intention of this contract that the lessor shall have and receive during the period of this lease, and of any and all renewals thereof, the amount of said rental free from and without any deduction whatsoever for any portion of said so-called tripartite bonds, or bonds of the Montgomery and Eufaula Railway Company, on which it appears as guarantor, or the interest on them or any of them. But nothing herein contained shall be con-

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strued as to make the lessee or any of its officers, agents or employees in any way liable or responsible for any indebtedness or liability which may be created or arise from the acts of omission or commission of any director or other officer or employee of the lessor unless done at the express instance or request or assent of the lessee; but neither party to this contract shall in any manner become liable for the acts of the other party, except in so far as they herein expressly authorize it.

In addition to the amount hereinbefore covenanted to be paid as rental, the lessee will further pay to the lessor an amount to pay the salaries of the President and of the Secretary and Treasurer of the lessor during the continuance of this lease and all
78 renewals thereof, provided such sums shall not exceed the sum of Twenty-five hundred ($2,500) dollars in any one year; and further amounts sufficient to provide and furnish to the lessor all necessary stock, account and transfer books, stationery and offices for the President and Secretary and Treasurer, and all necessary expenses connected with the transfer of stock of the lessor and the advertisement for and payment of its dividends and incident to the meetings of the Board of Directors of the lessor, or of its stockholders; and, further, that it will give to the President and Directors, and to the Secretary and Treasurer, of the said lessor, free transportation over the railroads owned or leased by the lessee, in the same manner as free transportation shall be accorded to the corresponding officers of the lessee.

And the said lessee hereby further covenants and agrees to keep in as good order and repair as when it shall receive possession and control of the same, the said lessor's railroads and other property and appurtenances; and in case it shall fail to pay any semi-annual amount of the rent as hereinbefore fixed on the first days of January or July in any year for the space of six months after the same shall become due and payable as hereinbefore provided, and be demanded by the lessor, it shall then be lawful for the Board of Directors of the said lessor to terminate this lease and enter and resume possession of said railroad with the appurtenances and all other of its property hereby demised, and from thenceforth this indenture and the estate, rights and privileges hereby granted, and every clause and article herein contained, shall cease, determine and be void. And the said lessee will thereupon deliver immediate and peaceable possession to the said lessor of said railroad and other property and appurtenances hereby demised in as good order as it received the same, replacing such as shall have been consumed by use or otherwise disposed of with other similar property of equal value.

And both parties hereto hereby covenant and agree to and with each other that they will respectively, at any and all times
79 after the date of these presents and during the continuance of this lease and all renewals thereof, make, execute and deliver such other conveyances, transfers and instruments in writing, and do such other things as shall be considered by counsel learned in the law necessary to give full effect to this lease or any part thereof.

It is understood that nothing herein contained is in any wise to affect the corporate character or existence of the said lessor, but that it is to maintain its corporate organization during the continuance of its charter, whether as now framed or as it may hereafter be extended or amended, to the fullest extent necessary to preserve its charter and protect the rights of its stockholders. And the lessee hereby expressly covenants to and with the lessor, that it will do and perform all things necessary to the maintenance of the franchise and of the said lessor and the performance of all its duties to the State and the public, save and except the maintenance of the organization of the lessor hereinbefore provided for; and that it will not do or permit to be done or omit or permit to be omitted any act or thing necessary to be done by the lessor for the maintenance of its charter and franchises.

It is further agreed that this modified and renewed contract of lease shall operate and be taken as to the powers, duties and liabilities of the parties thereto and in all other respects in substitution for those contained in the original lease contract of June 24th, 1869, the said powers, duties and liabilities of which original contract it is hereby agreed are no longer operative or in existence, except as herein expressly provided.

In Witness Whereof, the President of the said lessor being thereunto authorized by resolution of its Board of Directors, adopted on the 31st day of October, 1894, has hereunto affixed the seal of the said corporation and caused the same to be signed by its President and countersigned by its Secretary, and the said lessee has
80 by like resolution of its Board of Directors, adopted on the 17th day of October, 1895, hereunto affixed its corporate seal and caused the same to be signed by its Vice-President and countersigned by its Secretary in duplicate the day and year first above written.

THE SOUTHWESTERN RAILROAD CO.,
[COMPANY'S SEAL.] By R. T. WILSON, *President.*

Signed, sealed and delivered in the presence of us,
W. A. C. EWEN.
ALFRED C. JOPLING.
W. S. BRANTLEY, *Secretary.*

CENTRAL OF GEORGIA RAILWAY COMPANY,
[CO.'S SEAL.] By R. L. ANDERTON, JR.,
First Vice-President.

Attest:
W. E. FINDLEY, *Secretary.*
[COMMR'S SEAL.] WILLIAM H. CLARKSON,
Commissioner for the State of Georgia in New York.
Office, No. 115 Broadway, New York City.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 31st day of October, A. D., 1895, before me, William H. Clarkson, a Commissioner of the State of Georgia, in New York City, in the State of New York, personally appeared, Ralph L. Anderton, Jr., the First Vice-President of the Central of Georgia Railway Company, to me personally known to be the individual who as such First Vice-President, executed the foregoing instrument, who acknowledged that as such First
81 Vice-President, and for and in behalf of the Central of Georgia Railway Company, he executed the same, and caused the corporate seal of said Company to be thereto affixed for the uses and purposes therein named and mentioned, having, as such officer signed the same in my presence and in the presence of the other subscribing witnesses thereto. And personally ap-eared before me at the same time and place Richard T. Wilson, the President of the Southwestern Railroad Company, to me personally known to be the individual who as such President executed the foregoing instrument, who acknowledged that as such President and for and in behalf of the Southwestern Railroad Company, he executed the same and caused the corporate seal of said Company to be thereto affixed for the uses and purposes therein named and mentioned, having first as such officer signed the same in my presence and in the presence of the other subscribing witnesses thereto.

Witness my hand and official seal, hereto set and affixed, this 31st day of October, 1895.

WILLIAM H. CLARKSON,
Commissioner for the State of Georgia in New York.

Office, No. 115 Broadway, New York City.

82 EXHIBIT No. 13.

Final Decree.

In the District Court of the United States for the Northern District of Georgia.

No. —. In Equity.

CENTRAL OF GEORGIA RAILWAY COMPANY

vs.

WILLIAM A. WRIGHT, Comptroller General of the State of Georgia.

This cause came on for final hearing and was argued on bill, demurrer, answer and agreed statement of facts: Whereupon, after full consideration, and for the reasons stated in the opinion of the

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presiding judge filed with the record, it is ordered, considered, adjudged and decreed as follows:

1. That the demurrer be and it is hereby overruled.

2. That the equity of this cause is with the plaintiff.

3. That the two executions for the State taxes for the year 1911, issued by the defendant against the plaintiff, being respectively one for $4,709.44 for "Taxes on that portion of its property known in its system of railroads as the Augusta & Savannah Railroad," and one for $16,205.33 for "Taxes on that portion of its property known in its system of railroads as the Southwestern Railroad," copies of which executions are attached to the bill as Exhibits "B" and "C," and all other executions heretofore issued by the defendant against the plaintiff for the year 1911 for taxes on the same property alleged to be due sundry counties, municipalities and school districts of the State aggregating $40,101.16, or other large sum, are null
83 and void and of no effect, and shall be surrendered and cancelled; and the defendant, William A. Wright, Comptroller General of Georgia, and his successors in office, and all other persons who are or may hereafter be charged with the duty of collecting taxes within the State of Georgia or any political subdivision thereof, are hereby perpetually enjoined and restrained and commanded to desist and refrain from all efforts to collect the taxes represented by said executions, or to make any efforts toward the enforcement of said executions.

4. The defendant, William A. Wright, Comptroller General of the State of Georgia, and his successors in office and all persons who are or may hereafter be charged with the duty of assessing and collecting taxes within the State of Georgia or any political subdivision thereof, are hereby perpetually enjoined and restrained and commanded to desist and refrain from all efforts to assess or to collect or to issue executions for State, county, municipal, or school district taxes against the plaintiff, Central of Georgia Railway Company, on that portion of its alleged property known in its system of railroads as the Augusta & Savannah Railroad, or on that portion of its property known in its system of railroads as the Southwestern Railroad (both alleged to be owned and operated by said Central of Georgia Railway Company), or any taxes against said defendant as the alleged owner of the aforesaid properties.

5. That the plaintiff do recover of the defendant its costs in the case, to be taxed by the clerk.

In Open Court April 1st, 1913.

WM. T. NEWMAN,
U. S. Judge.

Filing.

Filed in Open Court April 1, 1913. O. C. Fuller, Clerk, by J. D. Steward, Dep. Clerk.

(Here follow tax return blanks marked pages 84 and 85.)

86 Docket No. 34653.

Fulton Superior Court, January Term, 1916.

In Equity.

CENTRAL OF GEORGIA RAILWAY COMPANY

vs.

WILLIAM A. WRIGHT, Compt. General.

Demurrer and Answer of the Defendant, William A. Wright, Comptroller General.

Filed in Office This 22 Day of December 1915. W. W. Clarke, Deputy Clerk Superior Court.

John C. Hart, Samuel H. Sibley, Solicitors for Defendant, William A. Wright, Comptroller General of the State of Georgia.

87 Docket No. —.

Fulton Superior Court, January Term, 1916.

In Equity.

CENTRAL OF GEORGIA RAILWAY COMPANY

vs.

WILLIAM A. WRIGHT, Compt. General.

Demurrer and Answer of the Defendant, William A. Wright, Comptroller General.

Filed in Office This — Day of December 1915. —— ——, Clerk Superior Court.

John C. Hart, Samuel H. Sibley, Solicitors for Defendant, William A. Wright, Comptroller General of the State of Georgia.

88 Fulton Superior Court, January Term, 1916.

In Equity.

CENTRAL OF GEORGIA RAILWAY CO.

vs.

WM. A. WRIGHT, Comptroller General.

And now, before answer, comes the defendant, and demurs to the petition as follows:

1. The same is without equity, and sets forth no sufficient cause for the relief prayed.

2. The last sub-division of the 8th Paragraph of the petition, beginning: "Under the 16th Section of the Act incorporating the Augusta and Waynesboro Railroad—," wherein are pleaded certain provisions of said Act regarding renting and farming out of the right of transportation on said railroad, is impertinent and irrelevant, said provisions appearing from the petition and exhibits not to have been acted on in making the leases in controversy, but the Act of 1852 only being relied on therein as authority for said leases.

3. Paragraph 11 is demurred to because, while referring to the terms of the charter of the Central of Georgia Railway Company in part, said charter is not fully and adequately exhibited, that the court may know the terms and provisions thereof.

4. Defendant demurs to Paragraph 21 of the petition as impertinent and irrelevant, and especially points out:

(*a*) The cases referred to as reported in 54 Georgia, 401; 92 U. S. 676; 62 Ga. 468; 62 Ga. 495, and 64 Ga. 783; appear to have been litigations to which Central of Georgia Railway Company was not a party, and is neither bound thereby nor can it take any
89 benefit therefrom as res judicata. Being res inter alios actæ, they are irrelevant. If relied on as res judicata no sufficient exhibit of the pleadings therein is made to enable the court to ascertain the issue made and decided thereby. Being litigations with lessors about the measure of their taxes, the liabilities of lessees could not have been involved.

(*b*) The litigation referred to as having been begun in 1911 between this defendant and the petitioner, culminating in a decision in 236 U. S. 674, is not sufficiently set forth to enable this court to understand the issue made and decided therein. It does not appear from any sufficient exhibit of the pleadings therein that any issue now in controversy was made and determined thereby, and until it so appears, the allegations respecting said litigation, and especially the quotation of excerpts from the opinion of the court, and exhibit of the decree, are impertinent and insufficient.

5. The allegations and conclusions of Par. 27 are insufficient in law, in that the contracts set up as existing in the charters of the Augusta & Savannah Railroad Company and Southwestern Railroad Company are to be construed in law as referring only to taxes assessable to and due by said corporations respectively, and not as running with their property or any interests therein which might be conveyed to another; said contracts being impotent to protect such other, having no contract with the State, from taxation lawfully imposed on account of the interests so conveyed to and owned by such other.

The Act of January 22, 1852, permitting the execution of the leases in controversy, upon its face is not an amendment of said charters, but a bare permission granted the Central Railroad and Banking Company to acquire lease interests in the railroads in question, together with various other railroads described as connecting
90 therewith. It was not on its face a contract with the State at all; and if it were, it contains no express stipulation by the

State whatever that the interests acquired by the Central Railroad and Banking Company should not thereafter be taxed; nor can any such be implied. Moreover, the interests now sought to be taxed arose under leases made in 1895, when all the laws now claimed to be void as impairing the contract, were in full force and effect, and when the petitioner by the laws under which it was incorporated and by virtue of which it exists, forbade the exemption from constitutional taxation of any property or interest in property that it might have or acquire. The allegations of said paragraph are therefore not good in law.

6. Par. 28 of the petition is demurred to upon the grounds above set forth. Wherefore defendant prays the judgment of the court whether he should further answer the petition, and the portions thereof specially demurred to, and that the same be stricken.

JNO. C. HART,
SAM'L H. SIBLEY,
Attorneys for Defendant.

91 In Fulton Superior Court, January Term, 1916.

In Equity.

CENTRAL OF GEORGIA RAILWAY CO.

VS.

WM. A. WRIGHT, as Comptroller General of Georgia.

And now comes the defendant, subject to his demurrer of file, and not waiving the same, and for answer to the bill says:

Par. 1 is admitted.

Par. 2 is admitted.

Par. 3 is admitted.

Par. 4 is admitted, save that the letter to the Presidents of the Augusta and Savannah Railroad Company and to the President of the Southwestern Railroad Company, copies of which were enclosed to petitioner, referred to income tax returns dated February 27, 1915, instead of February 27, 1914, the same being, however, for taxes on income earned in the year 1914.

Par. 5 is admitted.

Par. 6 is admitted, with the explanation that the mileages so used were those furnished by petitioner in its returns, as showing the amount of property located in each of said political sub-divisions.

Par. 7 is admitted, save that defendant has not estimated the sum to which said executions will amount.

Par. 8 is admitted to be true. As to the 16th section of the Act incorporating the Augusta and Savannah Railroad Company, defendant denies that it has any relevancy to the leases of the Augusta and Savannah Railroad mentioned in said paragraph, because
92 the said section relates only to the renting temporarily of the right to use said railroad, and not to a perpetual or indefinite

lease thereof; and because the leases actually made nowhere refer to said section as the authority relied on therefor, but do refer only to the Act of January 22, 1852.

The charters of the Southwestern Railroad Company and of the Muscogee Railroad Company contain no provisions whatsoever as to leasing or renting out their railroads.

Par. 9 is admitted.

Par. 10 is admitted in so far as it alleges that all the assets of the Central Railroad and Banking Co. were purchased at judicial sale by Thomas and Ryan, and that among such assets were the leasehold interests which the Central Railroad and Banking Company had in the Augusta and Savannah Railroad and the Southwestern Railroad, and that said railroad properties were delivered into the possession of Central of Georgia Railway Company on order of Thomas and Ryan under a decree of the Circuit Court of the United States dated Nov. 1, 1895. The remainder of said paragraph as to the antecedent negotiations of Thomas and Ryan, if material, defendant for want of sufficient information can neither admit nor deny.

Par. 11 is admitted, save as to the petition for incorporation of the Central of Georgia Railway Company specifying any powers under the Act of January 22, 1852, as to which defendant for want of information can neither admit nor deny. He avers, however, that the powers acquired by said corporation under the Act of December 17, 1892, authorizing it and amendments thereof, were such, and no other, as were specified by said Act, and the amendments
93 thereof, the provisions of which were written into and became a part of the charter of the petitioner granted thereunder.

Among said provisions pertinent to the present controversy, is that now found in Code 1911, Section 2885 (11) to-wit:

"In case of sale of any railroad heretofore incorporated by virtue of any general or special law * * * or any part thereof, constructed or in course of construction, by virtue of * * * any judicial sale, the party or parties acquiring title under such sales, and their associates, successors and assigns shall have and acquire thereby, and shall thereafter exercise and enjoy the same rights, franchise privileges, grants and immunities and advantages * * * which belonged to or were enjoyed by the company making such deed or mortgage or contracting such debt * * * as fully as said railroad company * * * might or could have had, had not such sale or purchase taken place; provided that nothing in this Article shall be construed to reserve any exemption from taxation, either State, municipal or county, or any special rights, privileges and immunities that are not herein authorized to be granted to each and all railroads alike in conformity with the present Constitution of Georgia."

Par. 12 is admitted, save that the new leases therein referred to and exhibited were by their express terms substitutes for the former leases respectively, each of said new leases concluding with this stipulation:

"It is further agreed that this new contract of lease shall operate and be taken as to the powers, duties and liabilities of the parties hereto and in all other respects, as a substitute for the original lease

contract of May 1, 1862, which original contract it is hereby agreed is no longer operative or in existence."

94 As to the allegation that said leases are "not different from ordinary leases of real estate except that the term is for a long period of time," this defendant admits that leases of ordinary real estate might be made with somewhat similar provisions and conditions, but he has never known of any such in his own experience, and would not call them ordinary.

Par. 13, as to the incorporation of the Augusta and Savannah Railroad Company is admitted.

Par. 14 as to said charter being an irrepealable contract is admitted, and it is admitted that so far as any taxes that the Augusta and Savannah Railroad Company may owe, the lease of its road has not impaired the contract. It is averred, however, that as to the taxes assessable against the lessee of said road in respect of the interest acquired by said lessee under its lease, said charter contract, which is one made with and for the benefit of the Augusta and Savannah Railroad Company alone, is not applicable, and has no pertinency to the taxes so due by the lessee.

Paragraph 15 is denied in the form alleged. It is true that for all years prior to the year 1914 the Augusta and Savannah Railroad Company, in supposed pursuance of its charter contract aforesaid, has returned to defendant as Comptroller its net earnings, and has been taxed thereon one-half of one per cent, which taxes were paid. It has never returned any property for taxation at all. In February, 1915, it returned as usual its net earnings for the preceding year, 1914, but defendant, conceiving that the return was made up on an improper basis under a then recent decision of the Supreme Court of the United States hereinafter referred to, so advised said company, directing it to return as its net income under the charter the

95 amount it received for the use of its property under said lease.

Defendant understands that the income tax laid upon the Augusta and Savannah Railroad Company is the only tax that the State of Georgia can exact from the Augusta and Savannah Railroad Company in respect of its taxable interests in said railroad, but the State is not precluded thereby from taxing any interest that others may acquire in respect thereof.

By the very terms of said charter the property of said company is subject to municipal taxation the same as other property within the municipal jurisdiction.

The allegations of Par. 16 with respect to the charters of the Southwestern Railroad Company and Muscogee Railroad Company, and their provisions as to taxation, are admitted to be true. It is admitted that the same are irrepealable contracts, and so far as the taxes due and payable by the Southwestern Railroad Company are concerned, were not destroyed by leasing its property. It is averred, however, that as to the assessment of taxes against the lessees of said property in respects of such interests as it acquired under the lease, said contracts are inapplicable, and have no pertinency, being contracts with and for the benefit alone of the corporations with which

they were respectively made, and not following the property into the hands of others.

As to Par. 17, defendant admits that the mileage of the aggregate roads leased by the Southwestern Railroad Company in Georgia is 329.59 and that the length of the several portions specified is as stated in said paragraph. It is admitted that the lines designated as "Charter Tax Lines" are covered by the charter provisions before
96 referred to, and that the Southwestern Railroad Company in respect to them was and is taxable only as provided by said charters.

It is admitted that defendant has not demanded of petitioner a return of the leasehold interest it has in the General Tax Lines mentioned in said paragraph, and that such interest has not been specially and separately returned or assessed. But prior to the demand for a return of the lease interest in the Charter Tax Lines, the entire title and interest of said General Tax Lines was regularly returned for general taxation each year, and taxes were assessed against them for their entire value, including all interests therein, and said taxes paid by petitioner, without objection by the owner of any interest.

Par. 18 is denied as alleged. It is true that defendant intentionally omitted the General Tax Lines from his demand on petitioner for a return of the leasehold interest in the Charter Tax Lines, for the reason that all interests therein had already been returned for taxation as stated in the preceding paragraph of this answer. It is the belief of defendant that under the laws of Georgia, strictly applied, the lessee's interest in all property is subject to separate taxation, but that as a practical proposition it is usual for either lessor or lessee to return the property as a whole, the one returning it paying the entire tax, and then settling among themselves according to their contract of lease. Where such a return is made and accepted of the property as a whole, defendant does believe that it would be improper to reassess a separate interest of any character in the property. As to the Charter Tax Lines in controversy, or any other property, interests in which are owned by persons who are subject to different methods of taxation, this defendant conceives that it is inevitable that their taxable interests should be separated under a just application of the law, and each owner taxed for his in-
97 terest according to the rule of taxation applicable to him. In the case of the Charter Tax Lines defendant conceives that the owners of the reversion therein, or of the rent issuing therefrom, should, according to the rule of taxation applicable to them, pay an income tax measured by the net income received from the lease; while the lessee, for the value of the interest it acquired under the lease should pay according to the rule of ad valorem taxation applicable to it and all other citizens of the State. The value of the interest of the lessor in a lease of such duration as that in controversy is practically governed by the amount of the rental, and the value of the lessee's interest is practically governed by the amount of profit that can be made out of the property above the rental. Both values combined should approximate the value of the property itself. In taxing the values separately to the separate owners no double taxa-

tion is involved, whether the rule of taxation of both owners is the same or not. The conclusions and arguments of Paragraph 18 to the contrary are denied.

The letter of August 31, 1915, is admitted, its purpose being to observe the very position above set forth, and to accept taxes from the lessor, or from the lessee in right of the lessor, on the basis of the lessor's net income only, to-wit: the rentals from the lease.

If defendant's belief that the separate interest of lessor and lessee are ordinarily taxable to each under a strict application of the Statutes of Georgia, be erroneous, still defendant avers that when the constitutional rule of uniform ad valorem taxation is impinged upon by contracts for special forms of taxation such as are here involved, a separation of interests in property is necessary in order that the constitutional rule of taxation may be applied to all values to
98 which it is applicable, and that the contractual taxation may be confined, as by law it should be to the strict limits of its lawful scope. Otherwise persons and property would be covered by such contractual taxation, as in the present controversy, which were never intended to be so covered by the State in making the contract.

Par. 19 is denied as alleged. The Charter Tax Lines were not returned for taxation at all, but the owners did make returns of income alleged to have been made by them, and taxes were assessed against said owners on a basis of the net incomes so returned for all past years, save that for the year 1914 the return was suggested to be confined to the income from the lease, as aforesaid. It is denied that the income taxes due and payable or paid by the Southwestern Railroad Company is in full of all taxes due on the property in controversy. No other taxes are due by said Southwestern Railroad Company in respect thereto, but the petitioner, as defendant contends, owes ad valorem taxes on its interest under its leases in respect of said railroads.

It is admitted that the General Tax Lines of the Southwestern Railroad Company have been returned sometimes by it and sometimes by petitioner for the year 1914 and prior years, the return covering the fee and all interests therein and ad valorem taxes have been assessed and collected thereon, on the same basis as other property of the State.

Par. 20 for want of sufficient information is neither admitted nor denied, as to the ownership of the property mentioned therein, but it is true that petitioner has always returned the engines and cars, etc., as its own for taxation as alleged.

Par. 21 is admitted. The taxes alleged to be paid in 1914 were on incomes returned as earned in 1913.

99 The litigations alluded to had with the Southwestern Railroad Company and Augusta and Savannah Railroad Company, which are not parties to this case, defendant is advised are irrelevant. It may be said, however, of the decision quoted from 62 Ga. 468, that it was entirely obiter, the court deciding that it had no jurisdiction of the case and dismissing it. Moreover, in the same paragraph quoted from, the court further said that the income tax was to be levied on the "gross income." In this respect the decision

was erroneous and obiter, and has never been followed, the income returned having been at all times the net income.

With reference to the recent litigation with petitioner, defendant avers that the point decided was that the petitioner could not be treated as the owner, and taxable for the "value of the fee" in the railroads in controversy, as distinguished from its interest as lessee, and injunction was ordered against tax executions based upon an assessment of that sort. To this effect the trial court thus expressed itself, at the conclusion of its opinion:

"It is clear that whatever rights the State has, if any, against the Central of Georgia Railway Company in connection with these two railroads to pay taxes otherwise than as is provided in the charters of the two companies, it must be enforced in some other way than proposed here. It cannot be done by assessing the entire value of these railroads for taxes against the Central of Georgia Railway Company as its property."

"No opinion is expressed as to whether or not there is something in the way of a leasehold interest or otherwise in these roads, subject to taxation against the Central of Georgia Railway Company, as not being within the scheme of the charters."

And the Supreme Court of the United States, in concluding
100 the majority opinion, thus limits its conclusions:

"The executions, as we have said, must stand or fall on the jurisdiction they disclose. They attempt to tax the fee as the property of the plaintiff. The injunction runs only against taxing the plaintiff as owner. We discuss nothing but the question before us. For the reasons we have given we are of opinion that the taxes cannot be collected on the present executions. The court cannot take the place of the taxing power. It follows that the injunction must be sustained."

It thus appears that the court expressed no intention of withdrawing from its other decisions declaring that the separate interests of lessees in exempt property was taxable in the lessees.

The facts stated in Par. 22 are true, except that petitioner, since it acquired its present leases has progressively invested large sums of its money in the improvement of the leased property from year to year. Defendant avers that the omission in the past to call upon petitioner for taxes upon its interest in the properties in dispute was not the result of any conscious determination that they had no such taxable interest, but *the* rather due to no attention at all being given the matter. No effort at all was ever undertaken to determine what if any interest the petitioner or the Central Railroad and Banking Company had acquired by their several leases, which was taxable to them, until the year 1911. The mere omission to tax an interest of petitioner which by the Constitution and laws is subject to taxation, no matter how long continued, could never operate to exempt said interest. Paragraph 4 of Section 2 of Article 7 of the Constitution of
the State prohibits to the Legislature the making of any such
101 exemption, and Paragraph 1 of Section 1 of Article 4 in like manner denies to any officer of the State the power by his

action or inaction to limit or restrain the taxation provided for in the Constitution.

The legal conclusions averred in Paragraph 23 are denied. Section 1008 of the Code of 1911 expressly requires that "All persons owning any mineral or timber interests or any other interest or claim in or to land less than the fee, shall return the same for taxation and pay taxes on the same as on other property." Section 1087 of said Code requires that the taxpayers be asked, among other questions, "for the purpose of having a full and correct return of the real and personal property of this State," this one:

"What is the value of your leases, or leased privileges, or other assets of like character?"

It is true that taxpayers have generally, as above stated, made their returns of leased property in solido, either the lessor or lessee returning all interests in the property in solido, and settling among themselves, and this has been treated as a substantial compliance with the law. Where, however, such a procedure would result in screening any separate interest in property from the equal ad valorem taxation provided by the Constitution, defendant conceives that such separation of interests is imperative, in order that taxation may be "uniform on the same class of subjects, and ad valorem on all property subject to be taxed within the territorial authority levying the tax."

The allegations of Par. 24 are denied. The leases mentioned do create a large, substantial and valuable estate in the lessee, which is subject to taxation. Were, however, the interest created only a usufruct, the actual market value of the right of occupancy
102 under the lease at the fixed rent as determined by the arbitrators, is very great, and is taxable, whatever the interest be denominated. The value of said right of use has been very greatly enhanced by the fact that petitioner has added many and costly improvements and additions to the leased property, the use of which improvements it has along with the property originally leased, without increase of rent.

Answering the allegations of Par. 25, it is true that petitioner is the only taxpayer that has been assessed for a leasehold interest by defendant during the years stated, but it is not true that there are other similar leaseholds within the jurisdiction of the defendant. So far as is known to defendant there are no other leases of property similar to those in controversy, and especially in the circumstance that the lessors are taxed by a rule other than the ad valorem taxation of the Constitution, unless it be a lease made of its railroad by the Georgia Railroad and Banking Company. While that lease differs in many essential respects from the ones now in question, the lessor therein has a similar exemption from ad valorem taxation. Defendant has insisted that the interest of the lessees under that lease is taxable, and proposes to have the same assessed for the years stated. Defendant does not know what the practice of all the Tax Receivers of the State of Georgia is as to the returns of leased property, but he believes that it is general if not universal to permit either the lessors or lessees, where there is no complication as to exemption of

one of them, to return the property in solido as elsewhere stated. It is true that defendant has a certain supervision of the Tax Receivers of the State, and has furnished to them blanks for the reception of tax returns, and that the blank is of the kind exhibited, and
103 the allegations as to the questions contained therein are true. The allegations as to a book of instructions issued by defendant are also true, as are those as to the blank for returns of railroad presidents. Defendant denies, however, that his omission of reference to any of the requirements of law operated to repeal the law or that there was any intention on his part to require or permit any substantial departure from the requirements of law. It is true that there are many leasehold estates in Georgia, and defendant believes that it is not usual to assess and tax them separately, but he denies that there has ever been any failure intentionally and deliberately to tax any such, but avers that they have not been separately taxed, only because the taxpayers have, as aforesaid, preferred to return all interests in one return in solido, and the tax officers have not been required to ascertain or investigate the separate interests if any in the property returned, the State and its sub-divisions having no interest or duty to do so. No question on the subject has been raised.

Defendant has no intentions at all regarding the year 1914 as alleged, all returns of taxes for said year so far as known to defendant having long since been made, and the taxes paid.

That the taxing of petitioner with its leasehold interest, and the failure to separately tax other persons or corporations for their leaseholds, is a denial to petitioner of the equal protection of the law or a taking of its property without due process of law is emphatically denied. As has been repeatedly averred, both the law and the practice of the Tax Department of Georgia, have exacted equal ad valorem taxation of all persons and corporations in respect of all their property, and no demand is now made upon petitioner except that it shall pay that same equal ad valorem tax on its property. If
104 there has been any looseness of method as to the particular taxpayer through whose return the tax should be reached, it has resulted in no inequality to petitioner, and is not a matter of which it is entitled to complain. The necessity of requiring a separate return of petitioner for its leasehold in the Charter Tax Railroads is not the result of any inequality in the laws, or denial of equal protection, but grows out of the contracts of the lessors which entail a necessary difference in dealing with property in which they have an interest.

Answering Par. 26, defendant admits that he has assessed and is about to assess the petitioner for the values of its leasehold interests as fixed by the arbitrators, for taxation by the counties, municipalities and school districts as alleged, and upon the basis substantially as alleged. He denies that there is no machinery provided for such distribution and assessment and that his action is without warrant of law and void. The interest under a lease of a railroad is evidently one that should be distributed for taxation among the counties and municipalities traversed. The basis of distribution has been decided by the courts to be one of the main line mileage, such as was fol-

lowed by defendant in this distribution. No other basis was furnished by the returns made by petitioner. That the taxable value to be distributed in the present case was one lump sum, and assumed to be equally distributed over the mileage involved is not a matter of which petitioner can complain, because defendant called upon petitioner, as shown by exhibit 1 of the petition, to return its interest in each of the railroads alleged in this paragraph to be separate, for State, county, municipal and school taxation, and petitioner made a return of a lump sum for the Southwestern properties. The arbitrators likewise found a lump sum, following the example
105 of the return. The petitioner having so made its return, could not be heard to complain that defendant has acted upon the subject matter thereof as a unit.

The conclusions alleged in Par. 27 are denied. The charter provisions as to taxation, while not entire exemptions from taxation, are exemptions from the power of the State to tax generally and are subject to all the rules of total exemptions, as to their construction. They are personal contracts made with the corporations having them alone, incapable of transfer to another, and not running with the property or any interest in it in the hands of another. While prescribing a limit of taxation beyond which the State may not go, on the properties mentioned, it means only so long as and to the extent that the holders of the exemption own the property. When the Act of 1852 was passed permitting a lease of the properties for the life of the charters of the companies concerned, the State contracted nothing as to the results upon taxation. While it is true that at that time there was no ad valorem taxation of railroads, and no tax attached to a leasehold interest in one as such, still there was no contract that the State would never enact laws otherwise. Said Act does not purport to be a contract of any sort on the part of the State. It was not an amendmen of any charter but a mere permission to make leases.

Moreover the leases then made are at an end, and have been substituted by others made in 1895, since the adoption of the present Constitution of Georgia, and the enactment of present laws, and the provisions thereof are to be considered a part of such leases. Petitioner itself came into being since the adoption of said Constitution and enactment of said laws, and the same are in like manner a part of its charter. The very law giving it existence more-
106 over, stipulated that no special immunity in the matter of taxation should be exercised by petitioner, as hereinbefore set forth. It is therefore impossible that petitioner can claim any escape from liability for lawful taxation in respect of such property as it has been permitted to acquire and enjoy, whether in fee or some less interest, under circumstances such as these.

The allegations of Par. 28 as to what laws defendant is proceeding under are admitted. The conclusions alleged in said paragraph are denied. As has just been averred in the preceding paragraph of this answer, petitioner has in no degree acted on the faith of any contract with the State of Georgia about any immunity from taxation, and in fact has never had any such contract whatever. On

the contrary the very law under which it exists and is permitted to receive the property in controversy, prohibits it from having and enjoying any tax immunity whatever. Moreover, it has under its lease added many steel bridges, new depots, heavier rail, additional side tracks to the leased property in all its parts and divisions, and the value thereof, both for use and ownership, has been thereby increased at least one-half. Were the contentions of petitioner sustained, all this additional investment of capital, made not on the faith of their charters by the lessors, but made by the petitioner as lessee, would be entirely and unjustly screened from taxation, and that not for the benefit of said lessors with whom the State contracted, but for the benefit only of petitioner with whom the State made no contract. And by the same rule, petitioner could multiply many fold for its own benefit the property known as the Augusta and Savannah Railroad and the Southwestern Railroad.

Par. 29 is admitted.

Par. 30 is admitted.

Further answering, and iterating his position regarding
107 the matters in controversy, defendant says:

The Constitution and laws of Georgia require the ad valorem taxation of all property and every interest in property, whether owned by persons or corporations, which is not lawfully exempt.

The property in controversy is not by its nature or use exempt by any provision of said Constitution or laws. Defendant admits that the corporations, the Augusta and Savannah Railroad Company, and the Southwestern Railroad Company are in respect of their property not subject to the general power of the State to tax, and that taxes can be exacted of those corporations in respect of their property only in accordance with their several charters. He contends that under settled rules of construction, that should said corporations convey their property in fee, said property would immediately become taxable generally as the property of the person to whom conveyed. He avers that when as here they convey for an indefinite period the right to use and enjoy the same by very long leases, and that right has a large market value, that the interest so conveyed is the property of the lessee and he is taxable in respect thereof. He contends that the lessor has a reversionary interest with a fixed rent issuing thereout, and that said rent is the net annual income of the lessor, and the lessor's taxes under its charter are properly measured thereby. The charter contract applies to the lessor and its income. Were the net earning of the leased property no greater than the rental, the lessee's interest would not be valuable, but where the net earnings are continually much greater than the rent, which is fixed, the interest and estate of the lessee becomes very valuable as here, and may easily exceed the value of the estate of the lessor.

The net income to complainant from the operation of the
108 Southwestern Railroad for the year 1914 was $427,562.23, while the yearly rental paid to the stockholders of the Southwestern Railroad was $259,555.00, being equal to 5 per centum on

the amount of capital stock of the said Southwestern Railroad, as per lease contract.

The net income to complainant from the operation of the Augusta and Savannah Railroad for the year 1914 was $72,963.33, while the yearly rental paid to the stockholders of said Augusta and Savannah Railroad was the sum of $55,145.00, being equal to 5 per centum on the amount of capital stock of the said Augusta and Savannah Railroad, as per terms of the lease contract.

The lessor's interest is taxed on its income tax. The lessee's interest is not so taxed, and is both fairly and legally to be taxed as the property of other citizens is taxed, according to its value.

Defendant contends that while the Augusta and Savannah Railroad Company was permitted in its charter to rent or farm out the right of transportation on its railroad, no such use of the roads of the Southwestern Railroad was contemplated in their charters, and in point of fact the former railroad has never availed itself of the charter permission.

The Central Railroad and Banking Company in 1852 obtained power and permission of the State of Georgia in the Act of 1852 to lease all the railroads with which it connected. This Act was no contract with any corporation, nor any amendment of the charter of any, but a permissive act only. It alone is relied on and recited as the authority for the two leases made in 1895, the interest under which is sought to be taxed. That Act contained no agreement on the part of the State about taxation. While there were then no laws imposing ad valorem taxes on any railroad or any in-
109 terest in any railroad, no express contract was made that no such laws should ever be enacted, and none is to be implied. A law permitting the acquisition of a leasehold interest is not different from the many laws that have been passed permitting the acquisition of a title in fee, and in these a permission to acquire the "rights and franchises" and the "privileges" of corporations having tax contracts has never been held to pass any tax immunity, nor to estop the State from enacting tax laws that would affect the property acquired. Defendant therefore contends that the interest of such lessees, and especially this lessee, the creature of the present Constitution and laws, whose charter prohibits to it any tax immunities, is subject to ad valorem taxation.

Defendant contends that any uniqueness in the return of such interests separate from the fee is not the result of any inequality in the laws, or in their enforcement, but of an inequality introduced by the petitioner in acquiring an interest in property situated as this is in respect of its taxation. None of the things of which complaint is made on this line is matter of which petitioner can complain. Petitioner is required only to pay equal ad valorem taxes on the actual market value of what it really owns and can sell, in respect of the railroads in controversy, as all other railroads are. Against such a requirement defendant protests that no injunction should issue from this honorable court. Wherefore the defendant prays that the court having the parties before it will adjudge the right to tax the interests assessed and decree them taxable.

And having fully answered, he prays to be hence discharged.

JNO. C. HART,
SAM'L H. SIBLEY,
Attorneys for Wm. A. Wright, Comptroller-General.

110 GEORGIA,
Fulton County:

You, W. A. Wright, do swear that the foregoing answer, so far as it relates to your act and deed is true, and so far as it relates to the act and deed of others you believe it to be true, so help you God:

WM. A. WRIGHT,
Comptroller-General.

Sworn to and subscribed before me Dec. 22, 1915.

[N. P. SEAL.] W. H. HARRISON,
Notary Public, Fulton County, Ga.

111 (*Amended Answer & Order.*)

GEORGIA,
Fulton County:

And now, by leave of the court, comes the defendant and amends his answer by adding to Par. 21 thereof the following:

Upon the trial of the case between the parties hereto wherein said opinions quoted were delivered, petitioner strongly contended that no question was then involved of the taxation of a leasehold interest in the railroads in dispute. In the written brief and argument filed by it, topical headings were as follows:

IV. The Comptroller General is seeking to tax the Central Company with the Augusta and Savannah and Southwestern Railroads on the theory that the Central Company is the owner of both railroads. The leasehold interest is not taxed, but the whole property is taxed at its full value.

V. The Court could not in this proceedings change the assessment from an assessment on the property itself to an assessment on the leasehold interest, and make a valuation of the leasehold interest.

Under these headings it was said, among other things:

"The execution in this case asserts on its face that the Central Company is the owner of the property. The assessment is made against it as owner, and the property is assessed at its full valuation. The assessment is not partly legal and partly illegal; it is wholly
112 illegal. It is not possible to separate the value of the leasehold interest from the value of the property, so far as the execution is concerned. * * *

"A court of equity could not substitute its judgment of the value of the leasehold interest for the method provided by law for the ascer-

tainment of the value of taxable property. A court of equity could not assess the property. The Comptrolloer General, in order to tax the leasehold, would have to follow the statute, make a new assessment, and arrive at the value of the leasehold interest in accordance with the provisions of the statute".

Appropriate authorities were cited to sustain these positions.

This defendant now pleads that, petitioner having won its former case on the contention that the taxation of the leasehold was not involved, cannot now contend that the taxability thereof was involved and adjudicated.

JOHN C. HART,
SAM'L H. SIBLEY,
Att'ys for Def't.

Verification waived. Allegations admitted this Jan'y 28th, 1916.

LAWTON AND CUNNINGHAM,
LITTLE, POWELL, SMITH & GOLDSTEIN,
Att'ys for Complainant.

113 (*Order.*)

The within amendment allowed. January 28, 1916.

W. D. ELLIS,
Judge S. C. A. C.

Filed in office this the 28th day of January, 1916.

J. C. LEWIS, *D. Cl'k.*

(*Stipulation.*)

By this stipulation, which shall be filed as a part of the record, it is agreed between the parties as follows:—

1. The case shall proceed to final hearing at the present term of the court and shall be heard and determined by the court without a jury on the pleadings and on this Stipulation.

2. The order of the Circuit Court of the United States of November 1, 1895, referred to in paragraph 10 of the petition (omitting caption and filing) is as follows:

"It appearing to the Court that the sale authorized by the decree of August 25, 1895, has been made and confirmed by decree of October 17, 1895, which directs the delivery on October 31, 1895, by the Receiver to Samuel Thomas and Thomas F. Ryan, purchasers, or their order, the possession of all and singular the railroad, appurtenances, equipment, material property, supplies and fran-
114 chises described in and conveyed by the deed to them from the Special Masters.

And it further appearing that such purchasers on October 17,

1895, were incorporated pursuant to the laws of Georgia under the name and style of "Central of Georgia Railway Company", and the said Thomas and Ryan have by deed dated October 29th, 1895, conveyed all the property purchased by them to said new railway corporation and have ordered delivery to be made by the Receiver to it of all property purchased by them.

And it further appearing that said purchase was made on a plan of purchase providing, among other things, that the new Company would obtain lease of the Southwestern and Augusta and Savannah Railroad at a rental of five per cent. upon their respective capital stocks, any arrears of rental due to such Companies to be adjusted on the same basis.

And it further appearing that leases have been agreed on between such new Company, the Central of Georgia Railway Company, and the Southwestern and Augusta and Savannah Railroads in renewals of and in substitution for the original leases to the Central Railroad and Banking Company of Georgia, as in said renewal set forth.

And it further appearing that no regular rental has been paid under the leases of the Southwestern Railroad since July 1, 1892, and of the Augusta and Savannah Railroad since June 1,
115 1893, it also appearing that, by order of this Court of June 30, 1893, these Companies were required to make their elections to take their roads back or allow the Receicers of this Court, for their respective accounts, to operate them, which latter course each Company elected should be done on the condition stated in such order that the net proceeds of operation should be paid over to such respective Companies.

And it further appearing that the Receivers have since July 1, 1893, paid to the Southwestern Railroad the sum of $25,000, pursuant to the order of April 14, 1894, and have also, under that order, deposited with the Farmers' Loan and Trust Company the further sum of $156,688, and have in hand of unspent net earnings, as appears from their report on file to August 31, 1895, the further sum of $221,378.27.

It is therefore ordered that the Farmers' Loan and Trust Company pay over to the Southwestern Railroad, or its Solicitors, all funds in their hands deposited by the Receivers under order of April 14, 1894, with such interest on the sum of $156,688, as was agreed on with the Receivers to be paid thereon, and the receipt of said Southwestern Railroad Company, or its Solicitors, shall be a full acquittance and discharge of said Trust Company.

It is also ordered that the Receivers pay to the Southwestern Railroad Company, or its Solicitors, the further sum of $221,-
116 378.26 in their hands as net earnings arising from the operation of that road to August 31, 1895, and all future net earnings arising from such operation from that date to November 1st, 1895.

And the Central of Georgia Railway Company hereby agrees and binds itself on or before December 15, 1895, to fully pay and discharge any balance due of the arrears of rental, calculated on the

basis of five per cent. on the capital stock of said Southwestern Railroad Company, deducting the payment herein stated, made and to be made, and upon the failure to make such payment on or before the date last aforesaid, the Southwestern Railroad Company shall be at liberty to apply to the Court on five days' notice for such summary order requiring the said Central of Georgia Railway Company to pay over such balance due prior to January 1, 1896; and it is

Further ordered, that the Receivers of this Court are hereby directed and authorized to turn over and deliver to the Central of Georgia Railway Company at midnight on October 31st, 1895, the possession of all the railroad and porperty of the said Southwestern Railroad Company now in their possession as officers of this Court. The said Central of Georgia Railroad Company accepting such possession subject to the orders of this Court requiring it to complete the payment of such back due rental on or before the date hereinbefore stated.

117 And it further appearing that rent due the Augusta and Savannah Railroad, pursuant to the terms of its lease to the Central Railroad and Banking Company of Georgia, was paid in full to June 1st, 1893, and since that date payments on account of the net earnings have been made by the Receivers to this date of One Hundred and Three Thousand Two Hundred and Sixty-four 54/100 dollars, and there is due back rental of five per cent. from June 1st, 1893, after deducting such payments, the sum of Twenty Thousand Three Hundred and Thirty-five 86/100 Dollars to November 1st, 1895.

It is therefore ordered that the Receivers of this Court pay over to the Augusta & Savannah Railroad Company, or its Solicitors, all the net earnings in their hands on November 1st, 1895, arising from the operation of said Railroad, and the Central of Georgia Railroad Company agrees and binds itself on or before December 15th, 1895, to fully pay and discharge any balance that may remain due on such arrears of rental as by it agreed to be paid, deducting such payments to be made by the Receivers, and upon the failure to make such payment, the said Augusta & Savannah Railroad shall be at liberty on five days' notice to move the Court for a summary order requiring the said Central of Georgia Railway Company to make such payment of the balance of such arrears of rental on or before January 1st, 1896.

118 The Court thereupon orders that the Receivers of this Court do, at midnight on October 31st, 1895, deliver over to the Central of Georgia Railway Company the possession of all of the said railroad and property as now in the custody of the Receivers, the said Central of Georgia Railway Company hereby accepting the possession of said property subject to the conditions of this order and the payments therein agreed to be made. November 1st, 1895.

DON A. PARDEE,
Circuit Judge.

We agree to entry of within order.

FRANK H. MILLER,
A. O. BACON,
A. L. MILLER,
Solicitors S. W. R. R. Co.
HENRY CRAWFORD,
Gen. Counsel Cent. of Ga. Ry. Co.
FRANK H. MILLER,
Sol'r A. & S. R. R."

3. The petition of Thomas and Ryan, purchasers, for incorporation of Central of Georgia Railway Company contains the following statements:—

"Third. The said Central Railroad and Banking Company of Georgia, the mortgagor aforesaid, was duly organized and existed and was endowed with corporate capacity, powers and franchises by and under a special charter granted to it by the General
119 Assembly of the State of Georgia, approved December 20, 1833, and entitled "An Act to incorporate the Central Railroad and Canal Company," and divers other acts of the General Assembly amendatory of and supplemental to the said original charter, changing the name of said corporation, enlarging its powers, authorizing it to consolidate with and acquire other railroads and especially an act of January 22, 1852, authorizing the said Central Railroad and Banking Company of Georgia to lease and work the South Western Railroad, the Augusta & Savannah Railroad and all other lines of railroad connecting with its own.

"Fifth. The said purchasers and their associates pray, upon the grounds aforesaid, to be substituted for the original stockholders of the said Central Railroad and Banking Company of Georgia, and to acquire hereby and be allowed to exercise and enjoy hereafter the same rights, privileges, grants, franchises, immunities, and advantages which belong to or were enjoyed by the said Central Railroad and Banking Company of Georgia, and were by it conveyed in and by said trust deed heretofore enumerated and they also specifically pray for the enjoyment of all powers, rights, and privileges conferred upon railroad corporations in and by the said Act of December 17, 1892, and the amendment thereof of December 15, 1894.

The order of incorporation, omitting preliminary recitals,
120 "Therefore the State of Georgia hereby grants unto the above named persons, their successors and assigns, the powers and priveleges of a corporation, with full authority by and under the name of Central of Georgia Railway Company to exercise the powers and priveleges of a corporation for the purpose above stated, and to maintain and operate the said railroad as praved for, subject to Article 4 of the Constitution of this State, and all the laws governing railroad companies at the date hereof or that may hereafter become of force either by Constitutional or statute law or by any rules or regulations of the Railroad Commission of this State or otherwise, which govern or control the operations of railroads in this State.

In Witness whereof these presents have been signed by the Secretary of State of the State of Georgia, at the Capital in Atlanta and the Great Seal of the State Attached hereto this 17th day of October, 1895.

ALLEN D. CHANDLER,
Secretary of State."

4. The tax returns of Augusta & Savannah Railroad and of Southwestern Railroad for 1914 and prior years referred to in paragraphs 15 and 19 of the petition and in those portions of the answer responsive thereto were made as follows: The only returns for
121 taxation demanded or required of said lessors by the Comptroller General were returns of income made upon blank forms prepared and furnished by the Comptroller General, which called only for the return of earnings and expenditures. The blanks prepared by the Comptroller General for returns of the property of railroads, with property values stated as a basis for taxation, were not furnished by the Comptroller General to these lessor corporations. The returns have always shown, and the tax has always been assessed upon, net earnings from the operations of the railway lines covered, and not merely the rental received by the lessor companies for their properties. The Comptroller General's blank forms are not prepared for returns of rental, but for earnings and operating expenses. The only direction of the Comptroller General to the lessor corporations referred to in those portions of the answer which are responsive to paragraphs 15 and 19 is contained in his letters of April 15, 1915, set out in paragraph 4 of the petition.

5. The returns of the General Tax Lines of the Southwestern referred to in paragraph 19 of the petition were made in the name of the Southwestern, but prior to the special return for 1911 were sworn to by a Vice-President of petitioner.

Thereafter they were sworn to by the President or Vice-President of the Southwestern.

6. The improvements on the leased property alleged in the
122 answer to paragraphs 22 and 28 as having been placed upon the leased properties by petitioner are only such improvements as were necessary to meet the demands of a growing business and to properly and economically operate the line in accordance with the standards of the day and the requirements of the heavier equipment used by all standard railroads.

They have consisted chiefly of heavier rails, additional track fastenings, strengthening of bridges and similar improvements necessary to carry heavier tonnage, with additional side tracks and better station facilities. There are no separate accounts of improvements upon the particular lines or road involved in this question, and no correct estimate thereof can be made.

7. Southwestern Railroad Company and Augusta & Savannah Railroad did not on November 1, 1895, own, nor have they at any time since owned, any engines, cars, or other equipment.

8. The income returns credited to the Charter Tax Lines as earn-

ings of those lines the entire amount earned from the transportation of persons and property over those lines as though no other property than the roadways and appurtenances leased had participated in or contributed to said earnings. No account was taken of the fact that the lessors did not own the other property used in connection with the operation of the Charter Tax Lines, such as the ter-
123 minals at Macon, the shops for the maintenance and repair of equipment, tools, locomotives, cars, wrecking and other service equipment, office buildings and other properties, all necessarily used in the operation of the Charter Tax Lines and production of revenue; nor of the State income tax, Federal income tax, and other items.

When it was apparent that the exact net income to petitioner from the use of the Charter Tax Lines would be material as a basis for the assessment of the value of the leasehold estates as set forth in the petition, petitioner prepared and submitted to the Board of Arbitrators, whose finding is set forth in Paragraph 4 of the petition, such additional items, and an account of average net income over and above rental taxes, etc., from Charter Tax Lines for six years ended December 31, 1914, to-wit:

Southwestern Railroad Company	$122,354.28
Augusta & Savannah Railroad	2,308.18

These figures were unanimously accepted by the Board of Arbitrators and the exact amounts thus stated were used by them as the basis for their assessment of the values of the leasehold estate and as being the actual net income from the Charter Tax Lines. They shall be treated as correct as far as they are material to this cause.

9. Besides the Southwestern and the Augusta & Savannah leased to petitioner and the 307 miles of the Georgia Railroad
124 leased to Atlantic Coast Line and Louisville & Nashville and referred to in the answer, the following lines of railroad within the State of Georgia are now and have been for some time past operated by lessees under leases from the owner thereof. No attempt has been by the State of Georgia or any political subdivision thereof to assess for taxation any leasehold estate therein. The fee simple estate of each of said lines is assessed by the State for ad valorem taxation.

Atlanta & Charlotte Air Line, 263.08 miles (of which 98.57 miles are in Georgia), Atlanta, Ga. to Charlotte, N. C., leased to Southern Railway Company under a perpetual lease. Rental, interest on bonds and minimum of 5% on $1,700.00 capital stock.

Atlanta, Birmingham & Atlantic Railroad Company and Fitzgerald, Ocilla & Broxton Railroad Company (two leases) to Ocilla Southern Railroad Company 19.8 miles of road and terminal facilities, terminable on one year's notice. Rental $1,800 per annum.

Western & Atlantic Railroad, 136.82 miles, Atlanta to Chattanooga, owned by the State of Georgia. Leased to Nashville, Chattanooga & St. Louis Railway Company for a term of 29 years from December 27, 1890. Rental $420,012 per annum.

Lyons Branch of Central of Georgia Railway Company, 57.65 miles Lyons to Meldria, Leased to Seaboard Air Line Com-
125 pany is perpetuity. Rental $43,500 per annum.

Elberton Southern Railway, 50.60 miles. Elberton to Toccoa. Leased to Southern Railway Company. Term and rental not given.

Georgia Midland Railway, 97.88 miles, McDonough to Columbus. Leased to Southern Railway Company for term of 99 years from July 1, 1896. Rental $52,000 per annum.

Sylvania Central Railway Company, 17 miles, Rocky Ford to Sylvania. Leased to Sylvania & Girard Railroad Company. Term expired December 31, 1915. Rental $1,800 per annum.

All said leased railroads were annually returned for ad valorem taxation by the Lessees as owners in fee without any request by anyone for the separation of interests therein and without calling the Comptroller General's attention to the leases; with the following exceptions: The Georgia Railroad lease includes its branch from Camak to Macon and its branch from Barnett to Washington, both of which are subject to ad valorem taxation. All the property of the Georgia Railroad was returned by the owner Lessor and not by the Lessee. The Western & Atlantic Railroad, which belongs to the State of Georgia, has not been returned by any one.

With the exception of the Western & Atlantic and the main line and Athens branch of the Georgia, none of said railroads
126 has any exemption from ad valorem taxation.

LAWTON AND CUNNINGHAM,
LITTLE, POWELL, SMITH AND GOLDSTEIN,
Solicitors for Petitioner.
JOHN C. HART,
SAM'L H. SIBLEY,
Solicitors for Defendant.

Let the above stipulation be filed and it is hereby make a part of the record. In Open Court, Jan'y 28th, 1916.

W. D. ELLIS,
Judge S. C. A. C.

Filed in office this the 28th day of January, 1916. J. C. Lewis, D. Clerk.

(*Decree.*)

The above stated cause having come on to be heard on final decree, upon the pleadings and the stipulations of the parties, it is ordered, adjudged and decreed:

1. That the demurrer of the defendant be and the same is hereby overruled.

2. That the execution issued by the defendant and described in the bill and those which are about to be issued by him of the same

tenor and effect for taxes on the interest of petitioner, in Au-
127 gusta and Savannah Railroad and in the Charter Tax Lines of the South Western Railroad Company which are described in the bill are null and void and that the defendant and his successors in office and all other persons who are or may hereafter be charged with the duty of assessing and collecting said taxes within the State of Georgia or any political subdivision thereof are hereby perpetually restrained and enjoined from issuing or enforcing said taxes or executions.

In Open Court, January 29th, 1916.

W. D. ELLIS,
Judge S. C. A. C.

128 STATE OF GEORGIA,
County of Fulton:

I Hereby Certify, That the foregoing pages, hereunto attached, contain a true Transcript of such parts of the record as are specified in the Bill of Exceptions and required, by the order of the Presiding Judge, to be sent to the Supreme Court, in the case of William A. Wright, Comptroller General of Georgia, Plaintiff in Error, vs. Central of Georgia Railway Company, Defendant in Error. I was unable to send up this record in the time prescribed on account of the volume of business in this office.

Witness my signature and the seal of Court affixed this 11th day of February, 1916.

[SEAL.] ARNOLD BROYLES,
Clerk Superior Court Fulton County, Georgia;
Ex-Officio Clerk City Court of Atlanta.

129 (Endorsed:) No. 33. Atlanta Circuit, Supreme Court. March Term, 1916. Wm. A. Wright, Comptroller General of Ga., versus Central of Georgia Railway Company. Transcript of Record. Filed in office Feb. 12, 1916. W. E. Talley, D. Clerk, S. C. Ga.

130 230.

33 Atlanta, March Term, 1916.

WRIGHT, Comptroller General,

v.

CENTRAL OF GEORGIA RAILWAY COMPANY.

1. A leasehold interest in a railroad for the full term of 101 years, renewable in like periods forever, at the option of the lessee, creates an interest in the property.

2. Such an interest is assessable for taxation against the owner thereof.

3. A charter exemption from taxation, or a charter limitation as

to the extent of the tax to be demanded of a railroad company on its property and appurtenances, will not be so extended as to exempt also the leasehold interest of parties to whom the company leases its property.

4. A railroad company embraces in its system several railroads. Some portion of the railroad is protected by a charter limitation as to the extent of the tax to be demanded of the company on that property. Other portions of the railroad were acquired by the company, and as to such portions the charter limitation does not apply. When the railroad company leases its entire system to a lessee, and the lessee makes a return for ad valorem taxation on the whole fee of so much of the railroad as has no charter exemption, and omits from its return for taxation the leasehold interest of so — of the
131 railroad as comes within the charter exemption, and where the proper taxing officer demands a return of the omitted leasehold interest, which is made under protest, the collection of the tax on such omitted leasehold interest will not be enjoined on the ground of lack of due process of law, or because the action of the taxing officer denies to the lessee the equal protection of the laws, or because the taxation of the leasehold interest under these circumstances violates the clause of the State constitution as to uniformity of taxation.

5. Inasmuch as the leases from the Augusta and Savannah and the Southwestern Railroad Companies to the Central of Georgia Railway Company create a claim or interest in the property separate and distinct from the fee, the taxation of the leasehold interest does not infringe any constitutional inhibition, State or Federal, against the impairment of contracts.

6. The comptroller-general's assessment of the leasehold interest of the Central of Georgia Railway Company in the railroads leased by it from the Augusta and Savannah Railroad Company and the Southwestern Railroad Company is in substantial compliance with the law providing for the assessment and collection of taxes due by railroad companies.

William A. Wright, comptroller general of the State of Georgia, assessed against the Central of Georgia Railway Company
132 taxes for the years 1908 to 1914, inclusive, on its leasehold interest in the Augusta and Savannah Railroad and its leasehold interest in certain portions of the Southwestern Railroad. The comptroller-general issued executions against the railroad company on these assessments for State taxes and certain county, municipal, and school-district taxes for the year 1914, and was about to issue similar executions for the prior years when the railway company filed its petition to restrain the comptroller-general from levying and collecting these executions. The case was heard by the judge without a jury upon the pleadings and stipulations filed in the cause; and a final decree was rendered, perpetually enjoining the defendant from levying and enforcing the tax executions. From this decree the comptroller-general sued out a writ of error.

The Augusta and Waynesboro Railroad Company was incorporated in 1838, and its name was subsequently changed to Augusta and

Savannah Railroad by the act of 1856. The thirteenth section of its charter (Acts 1838, p. 174) provides: "That the said railroad and the property of said company shall not be subject to be taxed higher than one half of one per centum on its annual income; and no city or town corporation shall have power to tax the stock of said company, but may tax any property, real or personal, of said com-
133 pany, within the jurisdiction of said city or town, in the same ratio of taxation of like property." The Southwestern Railroad Company was incorporated in 1845. The fourteenth section of its charter (Acts 1845, p. 132) provides: "That the said railway and its appurtenances, and all property therewith connected, shall not be subject to be taxes higher than one half of one per cent upon its annual net income." In the same year the Muscogee Railroad Company was incorporated, with a provision in its charter (Acts 1845, p. 116) "that the capital stock of the railroad company shall not be taxed by the State higher than one half of one per cent upon its net income, nor shall any other tax be levied or collected on the stock of said company." By the Act of 1856 (Acts 1856, p. 187) the Muscogee Railroad Company was united and merged into the Southwestern Railroad Company under the charter of the Southwestern Railroad Company, and all of its rights, privileges, and property became a part of the Southwestern Railroad Company. The total mileage of the lines of the Southwestern Railroad Company in Georgia is 329.59 miles. Of this mileage 198.72 miles are covered by the charter provisions as to taxation set forth above. The remaining lines of the Southwestern Railroad Company in Georgia, having a mileage of 130.87 miles, are not covered by the foregoing tax provisions of the charter, but are taxable on ad valorem basis as all property in Georgia is taxable. By acts of 1852 (Acts, p. 119) these two com-
134 panies were authorized to make leases of their Railroads to the Central Railroad and Banking Company of Georgia. The charter of the Augusta and Savannah Railroad expressly authorized that corporation to rent or farm out its property. On May 1, 1862, the Augusta and Savannah Railroad leased its railroad and franchises to the Central Railroad and Banking Company of Georgia, and on June 24, 1869, the Southwestern Railroad Company leased its railroad and franchises to the same lessee railway company. On March 4, 1892, all the properties and assets of the Central Railroad and Banking Company of Georgia, including its leasehold interests in the Augusta and Savannah Railroad and the Southwestern Railroad, passed into the hands of the receivers of the circuit court of the United States for the Southern district of Georgia. The greater part of the properties of the Central Railroad and Banking Company of Georgia, including these leasehold interests, were purchased by Thomas and Ryan at judicial sale. On October 17, 1895, these purchasers and their associates were incorporated under the name of the Central of Georgia Railway Company. The Southwestern Railroad Company, on October 17, 1895, entered into a contract with the Central of Georgia Railway Company, whereby the lease of its railroad to the Central Railroad and Banking Company was modified and renewed, and the modified lease was to run for the full term of 101

years, renewable in like periods, upon the same terms, forever,
135 the right of renewal to be in conformity to the laws authorizing it; and on October 24, 1895, the Augusta and Savannah Railroad also leased its railroad to the Central of Georgia Railway Company, the lease being substantially similar to the lease of the Southwestern Railroad Company. The consideration of each lease was the payment of an annual rental to the leasing Companies of five per cent upon their respective capital stocks. On these two leasehold interests the comptroller-general is seeking to collect the tax from the Central of Georgia Railway Company. The comptroller-general demanded of the Central of Georgia Railway Company that it make a return of the value of its lease and lease priveleges and other interests less than the fee, owned by the Central of Georgia Railway Company in and concerning the railroads in its system of railways respectively known as the Augusta and Savannah Railroad and the Southwestern Railroad. The railway company made a return, under protest, denying the taxability of these leasehold interests. In addition to assessing the leasehold interest for State taxation, the comptroller-general assessed taxes with respect to these leasehold interests in favor of the various counties, municipalities, and school districts through which the leased railroad runs in the case of the Augusta and Savannah, and through the charter lines run in the case of the Southwestern railroad. The tax to be
136 assessed in favor of counties, municipalities, and school districts was arrived at by first assigning to each of the political subdivisions such proportion of the total assessed valuation of the leasehold interest as the mileage in such political subdivisions bore to the total mileage of the leased line in the case of the Augusta and Savannah and of the charter-tax lines in the case of the Southwestern Railroad, and then multiplying that result by the tax rate of each of these respective political subdivisions. The grounds of attack upon the right of the State and its political subdivisions to tax these leasehold interests appear more fully in the opinion.

EVANS, *P. J.* (after stating the foregoing facts):

1. The leases are for the full term of 101 years, renewable in like periods upon the same terms forever, at the option of the lessee. A lease for a term of years is a chattel real; it is personal estate and not real. At common law the term "real estate" does not include anything short of a freehold. 2 Kent Com. *342, *401. An estate for years in this State passes for realty. Civil Code (1910), § 3685. It is not necessary to go into an analysis of the leasehold interest created by this lease to determine whether the leasehold interest is to be regarded as personalty or as realty; if it be either, it is property.
137 The constitution requires that taxation shall be ad valorem on all property not expressly exempted, and relatively to the question of taxation it makes no substantial difference whether the property of the beneficial owner be classed as realty or personalty. Wells v. Savannah, 87 Ga. 397 (13 S. E. 442); Atlanta National Building and Loan Association v. Stewart, 109 Ga. 80 (8), 81 (35

S. E. 73). A lease of the character of those under consideration is the practical equivalent of a sale of the property for a series of terms without end, and the lessee certainly acquires an interest in the property. The creditors of the predecessor of the present lessee esteemed the leases of such value as to have them administered as assets in a receivership proceeding. The present lessee is paying a substantial rent charge for the control and possession of the property for an indefinite time. A lessee under a lease for 101 years, renewable forever at his option, has a right both to possession and profits, which may be projected indefinitely into the future. Surely such a right creates an interest in the property.

2. Is a leasehold interest taxable in Georgia? The constitution, Art. 7, sec. 2, par. 1, (Civil Code, § 6553) declares that "all taxation shall be uniform upon the same class of subjects, and ad valorem on all property subject to be taxed within the territorial limits of the authority levying tax, and shall be levied and collected under
138 general laws." The article of the Civil Code on persons and property subject to taxation embraces § 1008, which reads as follows: "All persons owning any mineral or timber interests, or any other interest or claim in and to land less than the fee, shall return the same for taxation and pay taxes on the same as any other property." It is argued that this section only applies to cases where the interest attaches to something tangible which may be carved out of the property, as in the case of timber, turpentine, minerals, and the like, and has no application to leases of the kind we have under consideration. The language of the section is too comprehensive to admit of such a restriction, unless it be conceded that a lease of land for a long period of time, renewable in perpetuity at the option of the lessee, is neither an interest nor claim in and to the land. Such a concession can hardly be made when we come to consider what a valuable property right such a lease would be. Under these leases the lessee took the entire property to hold, if it pleased, in perpetuity, subject to an annual charge of five per cent. on the capital stock. Certainly this valuable right creates some interest or claim in the property. See P. W. & B. R. Co. v. Appeal Tax Court of Baltimore City, 50 Md. 397. It is contended, in support of the proposition that a leasehold interest is not taxable, that the rule at common law was that the landlord was bound to pay all State and municipal taxes upon the property, and that the common-law rule is in
139 force in Georgia. But we apprehend that this rule has never been applied to leases of the character of these, which extend into perpetuity at the election of the lessee. The scheme of taxation in this State is that taxes are chargeable against the owner of the property, if known. Life-tenants and those who own and enjoy the property are chargeable with the tax thereon. Civil Code (1910), § 1018. The legislature had in mind that the owner of the property might create in another an interest in his property, which interest was subject to taxation separately from the fee in the property, and accordingly in the formulation of a tax return required an answer to the question, "What is the value of your leases, or leased privileges, or other assets of like character?" Civil Code, § 1027. It may be

that sections 1008 and 1087 of the Civil Code were only intended to cover leases which create an interest in the property, and were not intended to apply to the ordinary case of landlord and tenant where the tenant has only an usufructuary right in the property. Be that as it may, these sections are applicable to leases of the kind we have under consideration.

3. Will the charter limitations upon the extent of the tax to be demanded of the Southwestern Railroad and the Augusta and Savannah Railroad be extended to the lessee so as to exempt from taxation the leasehold interest which it owns in these properties?

140 Our first inquiry will be to determine whether this question has been foreclosed by the recent decision of Wright v. Central of Georgia Railway Company, 236 U. S. 674 (35 Sup. Ct. 471, 59 L. ed. 781). That case involved the State's right to collect from the Central of Georgia Railway Company an ad valorem tax on the real estate, road-bed, and franchise value, after crediting one half of one per cent. of the net income, on that portion of its property known in its system respectively as the Augusta and Savannah Railroad and the Southwestern Railroad. The court in the majority opinion did not base its decision on the leases as technically effective to pass by assignment the contract in the charters from the lessor to the lessee, but reached its conclusion from a consideration of the specific transaction as permitted and encouraged by the charter act of 1838 and leasing act of 1852. These statutes were construed as making the fee exempt from other taxation than that provided for in favor of the lessee as well as the lessor. As we understand this decision, the State is prohibited by its charter contracts with the Southwestern Railroad Company and the Augusta and Savannah Railroad Company from collecting from the lessee, the Central of Georgia Railway Company, any tax assessed against the fee of the property and appurtenances of the leasing companies in the possession and control of the lessee, beyond one half of one per cent. upon

141 their respective annual incomes. The comptroller-general is not now seeking to assess and collect a tax on the fee in the property of the leasing companies, but a tax from the "Central of Georgia Railway Company as lessee on its lease and leased privileges and other interests less than the fee" of the Augusta and Savannah and the Southwestern Railroad, operated by the lessee as a part of its system. The subject-matter of the first effort to collect a tax was on the fee of the leasing companies; the present tax fi. fas. run against the lessee for the tax on its lease, leasehold privileges, and other interests less than the fee. The present question was not involved in the case before the United States Supreme Court.

Again, it is insisted that under former adjudications of this court, respecting a construction of these identical tax limitations, a settled and definite interpretation has been given to these charter provisions as excluding the State from taxing the leasehold interest of the lessee on the basis of ad valorem taxation. Perhaps the most pertinent observation on this subject may be found in the case of Goldsmith v. Augusta and Savannah Railroad Co., 62 Ga. 468, in the following language: "The lease of the road [A. & S. R. Co.] to another company

by authority of the legislature does not affect the basis of taxation.

The income contemplated by the charter is not annual rental,
142 but the earnings of the road. The act authorizing the lease not having any provision in regard to taxation, the limit in the charter was not lost or changed by the lease." This is not an authoritative ruling, for the reason that it is confessedly an obiter dictum, the only question before the court being one of jurisdiction; and the learned Justice delivering the opinion said that he made the ruling "to indicate the opinion of this court on questions necessary to a settlement of the case, should the parties desire a settlement." Moreover, the lessee was not a party, and the statement bore only on the lessor's liability for the tax. So far as concerns the question of the taxability of the lessee's interest arising out of the lease on an ad valorem basis, it is res integra in this State.

A charter exemption from taxation, or a charter limitation as to the extent of the tax to be demanded of a railroad company on its property and appurtenances, will not be so extended as to exempt also the leasehold interest of parties to whom the company leases its property. Jetton v. University of the South, 208 U. S. 489 (28 Sup. Ct. 375, 52 L. ed. 584). In that case the State of Tennessee granted an exemption to the university of 1,000 acres of land. The univer-

sity gave leases of lots within this tract. The State authorized
143 the taxing of leasehold interests. The university, and certain individuals claiming to be lessees of certain land from the university, brought a bill in equity to restrain the State's taxing officers from taking any proceedings to collect taxes from the lessees of the university within the limits of the thousand acres exempted in the university charter. The State of Tennessee, subsequently to the grant of the charter and the making of the leases, (which were non-assignable except by the consent of the university), enacted legislation authorizing the taxing of a leasehold interest. The Supreme Court of the United States held that the tax assessment against the lessees on their leasehold interest was not a tax against the university as owner of the fee, nor was it a tax on the university's income from the leases; that the tax, in form and substance, was upon a separate interest in real estate granted by the lessor, and was assessed against the owner of such separate interest, and was not in violation of the charter exemption. In discussing the nature of the interest, Mr. Justice Peckham, speaking in behalf of a unanimous court, said: "What is the exact interest of the lessee in the land it is not necessary here to determine. It is plain that he has some interest in it, and that interest is distinct from the fee, and may be taxed when the fee is exempt from taxation."

144 4. Up to this point we have endeavored to establish these propositions: that a lease of a railroad for 101 years for a stated annual rental, renewable in like periods upon the same terms, creates an interest or claim in the property; that the owner of any interest or claim in property less than the fee shall return the same for taxation; and that the charter limitation upon the extent of the tax to be demanded of the Southwestern and the Augusta and Savannah Railroad Companies will not be so extended as to exempt from

taxation the leasehold interest of the Central of Georgia Railway Company in these properties. We will now proceed to examine whether these propositions can be sustained as against constitutional and other objections urged by the lessee. The lease of the Southwestern Railroad Company embraces a system of roads some portion of which have no charter exemption from ad valorem taxation. It is urged that the taxation of the leasehold interests of these portions of the system which have a charter limitation as to the extent of the tax which may be demanded, and the omission to tax other leasehold interests in the system, is a denial of due process of law and an unjust and unequal classification of property. The record discloses that, prior to any call for a return of any leasehold interest, the lessee had returned for ad valorem taxation the entire fee in all portions of its system, save such as had a charter exemption. In the case of
145 these portions of the railroad which had a charter exemption from ad valorem taxation no return was made by the lessee of its interest in the property, and it is a tax on this interest of the lessee that is now sought to be collected. The comptroller-general assessed to the lessee the tax on that portion of its lines which has no charter exemption on the fee, and the lessee had returned the fee in that portion for taxation. The leasehold interests in the railroads so returned was taxed in taxing the entire fee. The comptroller-general recognized as fair the rule that if the whole fee was returned, the assessment on the whole fee, whether returned by lessor or lessee, necessarily embraced the leasehold interest on the non-charter lines. In the matter of the leasehold interest of the lessee in the property leased from the Augusta and Savannah and the Southwestern Railroad companies, a peculiar situation existed. This anomalous condition resulted from a tax limitation in the charters of these companies, limiting a tax on the fee assessable against them, which tax limitation was not repealed by the constitution of 1877, which demanded uniform ad valorem tax upon the same class of subjects. These railroad companies, by their own act, created an interest in the property in the lessee. This interest, being a separate and distinct subject class for taxation, either the constitutional mandate must be ignored or the leasehold interest of the lessee must be assessed
146 as was done by the comptroller-general. This action of the comptroller-general neither violated the due-process clause of the constitution, State and Federal, nor denied the lessee the equal protection of the laws, nor violated the tax-uniformity clause of the State constitution.

5. It is only necessary to observe that inasmuch as the leases from the Augusta and Savannah and the Southwestern Railroad Companies to the Central of Georgia Railway Company create a claim or interest in the property separate and distinct from the fee, the taxation of the leasehold interest does not infringe any constitutional inhibition, State or Federal, against the violation or impairment of contracts.

6. And lastly, the point is made that there is no machinery provided by law for the distribution of a tax on a leasehold interest among the counties, municipalities, and school districts located on

the leased lines, and in the absence of such machinery the leasehold interest cannot be taxed by such counties, municipalities, and school districts. This question is fraught with difficulty, and especially with reference to the lease of the Southwestern Railroad Company. The latter company owns a continuous line, made up of railroads whose charters have tax limitations and of railroads whose charters contain no exemptions. The charter-exemption lines in the
147 system are not continuous, having gaps between them supplied by railroads which have no tax exemptions. If there were as many lessees as there are different railroads in the Southwestern system, the assessment of the taxes of each road would be relieved of any serious complexity. It is the union of these different roads into one system owned by one company, and the lease by that company of all of them to a single lessee, that causes the complications. The comptroller-general solved the problem in this manner: He called upon the lessee to return the value of its leases and lease priveleges and other interests less than the fee, owned by it in and concerning the railroads in its system of railways respectively known as the Augusta and Savannah Railroad, extending from Augusta, Ga., to Millen, Ga., and those portions of the Southwestern Railroad extending from Macon to Americus, Cuthbert to Fort Gaines, Fort Valley to Columbus, and Smithville to Cuthbert. The lessee made a return under protest, fixing the value in aggregate sums for their interest in the property of lessor, and denied the taxability of their lease interest in these properties. A mileage basis was furnished, but no separate mileage valuation was placed in the return. The valuation of the aggregate mileage was placed in one sum. The comptroller-general acted on the implication that the mileage was of equal value, and applied the general law in making the assessments on that basis. We think the assessments were made in sub-
148 stantial accord with the general law for the assessment of railroads. This law and the comptroller's application of it may be more or less imperfect, but all modes of taxation are subject to this criticism. See Taylor v. Secor, 92 U. S. 575 (23 L. ed. 662); Atlanta Asso. v. Stewart, supra.

Judgment reversed. All the Justices concur.

149 Supreme Court of Georgia, Atlanta, February 13, 1917.

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

W. A. WRIGHT, Comptroller General,

v.

CENTRAL OF GEORGIA RY. CO.

This case came before this court upon a writ of error from the superior court of Fulton county; and, after argument had, it is considered and adjudged that the judgment of the court below be

reversed because the court erred in decreeing a permanent injunction. All the Justices concur.

Bill of costs, $10.00.

150 In the Supreme Court of the State of Georgia.

WM. A. WRIGHT, as Comptroller General of the State of Georgia, Plaintiff in Error,

v.

CENTRAL OF GEORGIA RAILWAY COMPANY, Defendant in Error.

Petition for Writ of Error from the Supreme Court of the United States to the Supreme Court of Georgia.

The petition of the Central of Georgia Railway Company respectfully shows:

1. William A. Wright as Comptroller General of the State of Georgia issued certain executions against Central of Georgia Railway Company for State taxes and certain County, Municipal and School District taxes for the year 1914, and was about to issue similar executions for the years 1908 to 1913 inclusive for taxes on its leasehold interest in the Augusta & Savannah Railroad and its leasehold interest in certain portions of the Southwestern Railroad.

2. On November 3, 1915, Central of Georgia Railway Company filed its petition against William A. Wright as Comptroller General of the State of Georgia in the Superior Court of Fulton County, Georgia, to enjoin the Defendant from levying and enforcing the said tax executions which he had issued and those he was about to issue.

3. The said cause having come to issue, on final hearing the Superior Court of Fulton County, Georgia, issued its order perpetually enjoining the levy and enforcement of said tax executions. Whereupon the Defendant took a bill of exceptions to the Supreme Court of Georgia.

4. On the 13th day of February, 1917, the Supreme Court of Georgia made and entered a final judgment herein reversing the judgment of the court below, in which judgment and proceedings had prior thereto in this cause certain errors were committed
151 to the prejudice of the petitioner, all of which in detail appear from the assignment of errors which is filed with this petition.

5. In this suit there was drawn in question the validity of certain statutes of the State of Georgia and an authority exercised under said State on the ground of their being repugnant to the Constitution of the United States and the decision is in favor of their validity; and the title, right, privilege or immunity is claimed under the Constitution of the United States and the decision is against the title, right, privelege or immunity set up or claimed by the petitioner, and peti-

tioner alleges that therein a manifest error has happened to the prejudice of petitioner.

6. The said Supreme Court of the State of Georgia is the highest court of the State of Georgia in which a decision in this suit and in this matter could be had.

Wherefore, petitioner prays that a writ of error may issue in this behalf from the Supreme Court of the United States to the Supreme Court of the State of Georgia for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this cause duly authenticated may be sent to the Supreme Court of the United States.

Petitioners further pray that they may be permitted to file a bond in accordance with the provisions of the law in such sum as may be directed and thereupon said judgment may be superseded until said cause is determined and decided by the Supreme Court of the United States.

This 26th day of February, 1917.

CENTRAL OF GEORGIA RAILWAY COMPANY,
By A. R. LAWTON,
T. M. CUNNINGHAM, JR.,
Its Attorneys at Law.

Filed in office March 15, 1917. Z. D. Harrison, C. S. C. Ga.

152 In the Supreme Court of the State of Georgia.

WM. A. WRIGHT, as Comptroller General of the State of Georgia, Plaintiff in Error,

v.

CENTRAL OF GEORGIA RAILROAD COMPANY, Defendant in Error.

Petition for Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Georgia.

This 15th day of March, 1917, came the Central of Georgia Railway Company and filed herein and presents to this Court a petition praying for the allowance of a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Georgia intended to be urged by it; praying also that a transcript of the record and proceedings, and the papers upon which the judgment was rendered, duly authenticated, might be sent to the Supreme Court of the United States; and that a supersedeas may be granted upon the filing of a bond for that purpose.

On consideration whereof, this Court, being the Court rendering the judgment and passing the decree complained of and the undersigned as Chief Justice of said Court do hereby allow the writ of error.

The writ of error shall operate as a supersedeas upon the petitioner

filing the bond required by law in the sum of Five thousand ($5,000.00) dollars.

This 15th day of March, 1917.

BEVERLY D. EVANS,
Acting Chief Justice of the Supreme Court of the State of Georgia, by Virtue of the Provision of §6112 of the Civil Code of Georgia; I Being the Oldest Justice in Commission and Performing the Duties of Chief Justice on Account of the Absence of the Chief Justice Because of Sickness.

Filed in office, March 15, 1917. Z. D. Harrison, C. S. C. Ga.

153 In the Supreme Court of Georgia.

WILLIAM A. WRIGHT, as Comptroller General of the State of Georgia, Plaintiff in Error,

v.

CENTRAL OF GEORGIA RAILWAY COMPANY, Defendant in Error.

Assignment of Errors.

Central of Georgia Railway Company, in connection with its petition in the above stated cause for writ of error, makes the following assignments of error which it avers occurred in the judgment of the Supreme Court of Georgia.

Central of Georgia Railway Company assigning error says that in the record and proceedings in the aforesaid cause, and in the judgment of the Supreme Court of Georgia, there is manifest error in this:

1. Under the Constitution of the State of Georgia all property subject to be taxed must be taxes uniformly and ad valorem and classification of property for taxation is not permitted. It is the universal and settled practice in Georgia not to tax leasehold interests in real estate, separate and apart from, and in addition to, the tax of the fee of the owner. The taxation to the Central of Georgia Railway Company of its leasehold interests in the Augusta & Savannah Railroad and the Southwestern Railroad, and the uniform omission to tax, and the universal and settled practice of the taxing department of the State not to tax all other leasehold interests of all other persons, is a denial to Central of Georgia Railway Company of the equal protection of the law and is a taking of its property without due process of law contrary to the 14th amendment of the Constitution of the United States, and the Supreme Court of Georgia erred in not so deciding and in reversing the judgment of the court below.

154 2. The Supreme Court of Georgia erred in deciding that the leasehold interests of the Central of Georgia Railway

Company in the Augusta & Savannah Railroad and in those portions of the Southwestern Railroad which are taxable under their charters at a rate not higher than one-half of one per cent. on their respective net incomes were taxable in addition to the taxation of the fee and in deciding that leasehold interests in all other property were not taxable in addition to the fee. This ground of classification is arbitrary, unreasonable and discriminatory against Central of Georgia Railway and is a denial of equal protection of the law and a denial of due process of law contrary to the 14th amendment of the Constitution of the United States.

3. The universal and systematic non-taxation of leasehold interests in property in the State of Georgia in addition to the taxation of the fee and the taxation of the leasehold interests of the Central of Georgia Railway Company in the Augusta & Savannah Railroad and those portions of the Southwestern Railroad which have a charter limitation as to taxes is a arbitrary and unjust classification in that the railroads of the lessors when they have paid taxes at the rate of one-half percent. on their respective net income as required by their charters are completely and exhaustively taxed, and the fact that the lessors cannot be taxed at a higher rate is no reason whatever for taxing the lessee with its leasehold interests, and the universal and systematic non-taxation of other leasehold interests in property which has no charter limitations as to taxes is a denial of equal protection of the law and a denial of due process of law to Central of Georgia Railway Company contrary to the 14th amendment of the Constitution of the United States.

4. The Supreme Court of Georgia erred in deciding as follows:

"The record disclosed that, prior to any call for a return of any leasehold interest, the lessee had returned for ad valorem taxation the entire fee in all portions of its system save such as had a charter exemption. In the case of these portions of the railroad which had
a charter exemption from ad valorem taxation, no return was
155 made by the lessee of its interest in the property and it is a
tax on this interest of the lessee that is now sought to be collected. The Comptroller General assessed to the lessee the tax on that portion of its lines which has no charter exemption on the fee and the lessee had returned the fee in that portion for taxation."

The Supreme Court of Georgia was here referring to the return of the lines of the Southwestern Railroad, portions of which railroad have no charter tax limitations. The Supreme Court of Georgia erred in stating that the lessee made any return for taxation any portion of the Southwestern Railroad. The lessee made no such return. On the contrary, the record discloses that the lessor made a return for ad valorem taxation of the entire fee of such portions of its lines as had no charter exemption. See especially Paragraph 5 of the stipulation in the record.

The Supreme Court erred in the following statement made in its decision:

"It is urged that the taxation of the leasehold interests of these portions of the system which have a charter limitation as to the ex-

tent of the tax which may be demanded, and the omission to tax other leasehold interests in the system, is a denial of due process of law and an unjust and unequal classification of property."

The Court was here referring to the lines of the Southwestern Railroad Company. Central of Georgia Railway Company made no such contention. The Comptroller General demanded a return of the leasehold interests in the particular lines of the Southwestern Railroad Company which had a charter limitation as to taxes and intentionally omitted to demand a return of the leasehold interests in the lines of the Southwestern Railroad Company which had no charter limitation as to taxes. It was not urged that this was a denial of due process of law to Central of Georgia Railway Company. The contention was that it was illogical, and attention was called to the fact to illustrate the point that the Comptroller General was seeking to tax the leasehold interests in the charter tax lines, not because under the law leasehold interests were taxable, but because the State was estopped by its contract from taxing those lines on the ad valorem basis, and in this way the State was seeking to repudiate its
156 contract. The point was made in the pleadings and in the argument that the taxation of the leasehold interests in the charter tax lines, and the non-taxation of the leasehold interests of all other persons in all other property, was a denial of equal protection of the law.

6. The Supreme Court of Georgia decided that the taxation of the leasehold interests of the Central of Georgia Railway Company in the Augusta and Savannah Railroad and in the lines of the Southwestern Railroad Company, which have a charter limitation as to taxes, was not an *in*pairment of the obligation of the tax provisions contained in the charters of said two railroad companies, of the lease contracts, and so construed the Constitution and Laws of Georgia subsequently passed as to impair the obligation of said contracts, and erred in *do* deciding. The tax provision of the charter of the Augusta & Savannah Railroad and the tax provision of the charter of the Southwestern Railroad Company are inviolable and irrepealable contracts of the State of Georgia and no law of the State of Georgia passed subsequent to the date of said charter can affect or impair the obligations of said charter contracts. The lease made by the Augusta & Savannah Railroad and Southwestern Railroad Company to the Central Railroad & Banking Company of Georgia, and the modifications and renewals thereof to its successor, Central of Georgia Railway Company, were made on the faith of the provisions contained in the charters of the Augusta & Savannah Railroad and the Southwestern Railroad Company with respect to taxation. The tax imposed by said charters is a tax on the railroad properties themselves, and is imposed in lieu of all other taxes on said properties, and the leasehold interests of the Central of Georgia Railway Company in said properties cannot be taxed in addition to taxation of the fee without in substance and effect taxing the said properties higher than the rate of one-half of one per cent on their net income which is the limit of taxation prescribed by the respective charters of said companies for the taxation of said railroad properties. The Su-

preme Court of Georgia so applied and construed the Consti-
157 tution of the State of Georgia and the Laws of the State of Georgia, all of which were passed subsequent to the charter provisions for the taxation of the Augusta & Savannah Railroad and the Southwestern Railroad and the Act of January 22, 1852, authorizing the leases as to impair the obligation of said charter tax provisions and the obligations of said lease contracts, contrary to Article 1, Section 10, Paragraph 1 of the Constitution of the United States which provides that no State shall pass any law impairing the obligation of contracts.

7. The Supreme Court of Georgia erred in reversing the judgment of the court below in holding that there was no denial of equal protection of the law, or due process of law, to the Defendant in Error, contrary to the 14th amendment of the Constitution of the United States; and also erred in so construing and applying the Constitution and Laws of the State of Georgia passed subsequent to charter provisions for the taxation of the Augusta & Savannah Railroad and Southwestern Railroad Company, and the Act of January 22, 1852, of the State of Georgia authorizing the said leases as to impair the obligation of said charter tax provisions and the obligation of said lease contracts, contrary to that Article of the Constitution of the United States which provides that no State shall pass any law impairing the obligation of the contracts.

8. The Supreme Court of Georgia erred in holding and deciding that the Statutes of Georgia enacted subsequently to the charter tax provisions herein before recited provide for assessment of leasehold interests in these railroads for county, municipal and school district taxation, and for the apportionment of values among the different counties, municipalities and school districts, and is not holding and deciding that said statutes thus construed impair the obligation of the contracts contained in said charters, deprive Central of Georgia Railway Company of its property without due process of law, and deny to Central of Georgia Railway Company the equal protection of the laws, all in contravention of the provisions of the Constitution of the United States hereinbefore referred to.

158 Wherefore the said Central of Georgia Railway Company prays that the judgment of the Supreme Court of the State of Georgia, reversing the judgment of the court below, may be set aside and reversed.

A. R. LAWTON,
T. M. CUNNINGHAM, JR.,
Attorneys for Petitioner.

Filed in office. March 15, 1917. Z. D. Harrison, C. S. C. Ga.

159 UNITED STATES OF AMERICA, *ss:*

[Seal U. S. District Court, N. D. Georgia.]

The President of the United States of America, to the Honorable the Judges of the Supreme Court of the State of Georgia; or to the Chief Justice of the Supreme Court of the State of Georgia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Georgia before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between William A. Wright as Comptroller General of the State of Georgia, Plaintiff in Error and Central of Georgia Railway Company, Defendant in Error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein any title right, privilege, or immunity
160 was claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision was against the title, right, privilege, or immunity especially set up or claimed under such Constitution, treaty, statute, commission, or authority; a manifest error hath happened to the great damage of the said Defendant in Error as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 14th day of March, in the year of our Lord one thousand nine hundred and seventeen.

OLIN C. FULLER,
Clerk United States District Court,
Northern District of Georgia.

Allowed by

BEVERLY D. EVANS,

Acting Chief Justice of the Supreme Court of the State of Georgia, by Virtue of the Provisions of §6112 of the Civil Code of Georgia; I Being the Oldest Justice in Commission, and Performing the Duties of Chief Justice on Account of the Absence of the Chief Justice, Because of Sickness.

[Endorsed:] Supreme Court of the State — Georgia. William A. Wright as Comptroller General of the State of Georgia, Plaintiff in Error, vs. Central of Georgia Ry. Co., Defendant in Error. Writ of Error. Filed in office March 15, 1917. Z. D. Harrison, C. S. C. Ga.

161 United States of America to William A. Wright, as Comptroller General of the State of Georgia:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the State of Georgia, wherein you are Plaintiff in Error and the Central of Georgia Railway Company is Defendant in Error, to show cause, if any there be, why the writ of error mentioned should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable William H. Fish, Chief Justice of the Supreme Court of the State of Georgia, this 15th day of March, 1917.

BEVERLY D. EVANS,

Acting Chief Justice of the Supreme Court of the State of Georgia, by Virtue of the Provision of §6112 of the Civil Code of Georgia; I Being the Oldest Justice in Commission, and Performing the Duties of Chief Justice on Account of the Absence of the Chief Justice Because of Illness.

Service acknowledged and copy received of the within citation, this 15th day of March, 1917.

JNO. C. HART &
SAMUEL H. SIBLEY,

Attorneys for William A. Wright as Comptroller General of the State of Georgia.

Filed in Office March 15, 1917. Z. D. Harrison, C. S. C. Ga.

162 WM. A. WRIGHT, as Comptroller General of the State of Georgia, Plaintiff in Error,

v.

CENTRAL OF GEORGIA RAILWAY COMPANY, Defendant in Error.

Præcipe.

Know all men by these presents That Central of Georgia Railway Company as Principal and American Surety Company of New York as Surety are held and firmly bound unto William A. Wright as Comptroller General of the State of Georgia, in the sum of Five thousand ($5,000.00) dollars to be paid to the said William A. Wright as Comptroller General of the State of Georgia, for which payment well and truly to be made we bind ourselves and each of us joint- and severally and each of our successors and assigns firmly by these presents.

Signed with our seals and dated this 26th day of February, 1917.

Whereas the above named Central of Georgia Railway Company has prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled cause by the Supreme Court of the State of Georgia,

Now, therefore, the condition of this obligation is such that if the above named Central of Georgia Railway Company shall prosecute the said writ of error to effect and answer all damages and costs should it fail to make good its plea, then this obligation to be void; otherwise to remain in full force and virtue.

CENTRAL OF GEORGIA RAILWAY COMPANY,
By A. R. LAWTON, *Vice-President.*

Attest:

CHAS. F. GROVES,
Secretary.

Signed, sealed and delivered in Chatham County, Georgia, in presence of:

A. ELIZABETH TRACY.
GEORGE O'DONNELL,
Notary Public, Chatham County.

163 AMERICAN SURETY CO. OF N. Y.,
By — POWERS, *Att'y-in-Fact.*

Approved this 15th day of March, 1917.

BEVERLY D. EVANS,
Acting Chief Justice of the Supreme Court of Georgia, by Virtue of the Provisions of §6112 of the Civil Code of Georgia; I Being the Oldest Justice in Commission, and Performing the Duties of Chief Justice on Account of the Absence of the Chief Justice Because of Illness.

Filed in office, March 15th, 1917. Z. D. Harrison, C. S. C. Ga.

164 WM. A. WRIGHT, as Comptroller General of the State of Georgia, Plaintiff in Error,

v.

CENTRAL OF GEORGIA RAILWAY COMPANY, Defendant in Error.

Præcipe.

The Clerk in making out a transcript for the Writ of Error to the Supreme Court of the United States in the above entitled cause will please include the following parts of the record:

1. The petition, together with all the exhibits thereto and the endorsements thereon.

2. The demurrer.

3. The Defendant's answer.

4. The Defendant's amended answer, together with the waiver of verification and the admission of the allegations endorsed thereon by the Attorneys for the Complainant.

5. The final decree of the Superior Court of Fulton County overruling the demurrer and granting a permanent injunction.

6. The bill of exceptions taken by the Defendant to the Supreme Court of Georgia.

7. Judgment of the Supreme Court of the State of Georgia.

8. Opinion of the Supreme Court of the State of Georgia.

9. Petition for writ of error and order allowing the writ.

10. Assignment of Errors.

11. Original writ of error.

12. Original citation and acknowledgment of service thereon.

13. Supersedeas bond.

14. This præcipe.

165

A. R. LAWTON,
T. M. CUNNINGHAM, JR.,
Attorneys for Central of Georgia Railway Company.

Due and legal service of the foregoing præcipe hereby asknowledged and copy received, this 15th day of March, 1917.

JNO. C. HART &
SAMUEL H. SIBLEY,
Attorneys for William A. Wright as Comptroller General for the State of Georgia.

Filed in office March 15, 1917. Z. D. Harrison, C. S. C. Ga.

166 Supreme Court of the State of Georgia.

Clerk's Office.

ATLANTA, GA., March 24, 1917.

I hereby certify that the foregoing pages hereto attached contain the original writ of error, citation, acknowledgment of service thereof, together with a true and complete transcript of those parts of the record in the case of Wm. A. Wright, Comptroller General of the State of Georgia, vs. Central of Georgia Railway Company, which are required by the præcipe of the petitioner for writ of error to be sent to the Supreme Court of the United States, as appears from the records and files of this office.

Witness my signature and the seal of the Supreme Court of Georgia hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia.]

Z. D. HARRISON,
Clerk of the Supreme Court of Georgia.

Endorsed on cover: File No. 25,875. Georgia Supreme Court. Term No. 1045. Central of Georgia Railway Company, plaintiff in error, vs. William A. Wright, comptroller general of the State of Georgia. Filed April 2d, 1917. File No. 25,875.

Office Supreme Court, U. S.
FILED
MAY 7 1917
JAMES D. MAHER
CLERK

No. 1045 163

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

CENTRAL OF GEORGIA RAILWAY COMPANY, Petitioner,
vs.
WM. A. WRIGHT, as Comptroller General of the State of Georgia, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA.

Presented under Amendment of 1916 to Section 237 Judicial Code.

Same case pending on writ of error. Docket No. 1045.

ALEXANDER R. LAWTON,
T. M. CUNNINGHAM, JR.,
For Petitioner.

Braid & Hutton, Inc., Printers, Savannah, Ga.

No.----------

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

CENTRAL OF GEORGIA RAILWAY COMPANY, Petitioner,
vs.
WM. A. WRIGHT, as Comptroller General of the State of Georgia, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA.

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

The petition of Central of Georgia Railway Company for a writ of certiorari to the Supreme Court of Georgia respectfully shows:

1. Respondent is seeking to levy certain executions for taxes in respect of the leasehold interest of Petitioner in certain lines of railroad of the Southwestern Railroad Company and in the railroad of the Augusta & Savannah Railroad.

2. Petitioner is resisting in the Courts of the State of Georgia the enforcement of said executions upon two federal constitutional grounds:

First: The charters of the lessor corporations provide in substance that the railroads covered by the charters shall not be subject to be taxed higher than one-half of one per cent. per annum upon the annual net income of these railroads. The charter provisions are set forth in full in the Records, pp. 12-13. The taxes on said railroads have been paid up to the maximum rate prescribed by their charters. These charter provisions are inviolable contracts with the State. The limitations as to taxation relates to the property itself, and, the property having been taxed at the maximum rate prescribed by charter, neither the property itself nor any interest in the property can be further taxed. Respondent is seeking to tax Petitioner with its leasehold interest in said railroads, in addition to the taxes already paid on the properties under the charter provisions. Respondent has so construed and applied the Constitution and certain statutes of the State passed subsequent to the contracts as to impair the obligation of said contracts contrary to Article I, Section 10, Paragraph 1 of the Constitution of the United States.

Second: The uniform and settled practice of Respondent and of other taxing authorities of the State being not to tax leasehold interests, and the uniform and settled practice of all tax payers in the State being not to return leasehold interests for taxation, the taxation to Petitioner of its leasehold interest in these railroad properties is a denial to Petitioner of the equal protection of the law and of due process of law, contrary to the 14th Amendment to the Constitution of the United States.

3. On February 13, 1917, the Supreme Court of Georgia, which is the highest Court in the State in which a decision in this suit and in this matter could be had, decided adversely

to Petitioner both of the federal constitutional questions above set forth, in a case there pending entitled William A. Wright, Comptroller General of the State of Georgia, Plaintiff in Error vs. Central of Georgia Railway Company, Defendant in Error.

4. Petitioner has sued out a writ of error from this decision of the Supreme Court of Georgia to the Supreme Court of the United States and the writ of error is now docketed in this Court under the title of "Central of Georgia Railway Company, Plaintiff in Error vs Wm. A. Wright, Comptroller General, Defendant in Error, Docket No. 1045." The certified record in No. 1045 has been filed in this Court and printed, and is submitted herewith as a part of this petition for certiorari.

5. Petitioner is of opinion that writ of error is the proper remedy; but is now asking for the writ of certiorari as a matter of precaution and because it is difficult to tell in a case of this kind whether the proper remedy is by writ of error or by writ of certiorari, in view of Judicial Code §237 as amended by the Act of December 23, 1914, c. 2, and by the Act of September 6, 1916, c. 448, §2 (United States Compiled Statutes §1214, where a history of the Section will be found). As the amended Section now reads, where any right, title, privilege or immunity is claimed under the Constitution of the United States, and the decision is either in favor of or against the title, right, privilege or immunity claimed, the remedy is by certiorari; and where is drawn in question the validity of a statute of, or an authority exercised under, the State on the ground of their being repugnant to the Constitution of the United States, and the decision is in favor of their validity, the remedy is by writ of error. It is difficult to tell whether this case falls wholly under the first or the second provision, or whether one of the constitutional points raised in the case falls under one of the provisions and the other constitutional point falls under the other provision.

6. Respondent in this case attempted on a previous occasion to tax Petitioner with the fee of these same railroads. That case was taken to the Supreme Court of the United States and is reported as:

Wright vs. Central Railway, 236 U. S. 647.

This Court, construing the charters in conjunction with the leases, there said:

> "We construe these statutes as making the fee exempt from other taxation than that provided for in favor as well of the lessee as of the lessor, the protection of the lease being necessary in order to make good that promised the lessor."

7. The case at bar is distinguishable from Jetton vs. University of South, 208 U. S. 489.

(1) In the Jetton case there was no question of discrimination as there is in this case. All leaseholds were taxed.

(2) In the Jetton case, under the charter of the University, the land was wholly exempt from taxation so long as the lands belonged to the University. In the case at bar there is no exemption from taxation; there is merely a limit of the rate at which the property may be taxed.

(3) In the case at bar the legislation in respect to the leases indicates that it was not intended to change and did not change the method of taxation because of the leases.

8. This case is distinguishable from that line of decision of which Rochester Ry. Co. vs. Rochester, 205 U. S. 236, is typical. In that case and similar cases it is held that an exemption from taxation does not pass to an assignee or transferee by a conveyance of the rights, titles, privileges, im-

munities and franchises of the corporation upon which the tax exemption was conferred. In the case at bar there has been no transfer of any of the rights, powers or privileges of the lessor corporations, except the privilege to operate their railroads. We are not claiming any exemption as a transferee. We are claiming that the charters prescribed a maximum rate for the taxation of these railroads and that they cannot be additionally taxed to us without violating the charters.

The leases, as decided in Wright vs. Central Railway, 236 U. S. 674, did not affect the limitation of taxation provided in the charters. The income which is taxable is not the income of the lessor from the rentals, but is the income derived from the property by the operation of the property. This has been the uniform practice, and it was so decided in

Goldsmith vs. Augusta & Savannah R. R., 62 Ga., 468 (h. n. 3).

9. The charters of these leased railroads, which are inviolable contracts with the State and should be a shield and protection against taxation beyond the limited rate prescribed by the charters, have been used as the basis for a discrimination against Petitioner. While under the decision of the Supreme Court of Georgia in this case the laws of Georgia permit the taxation of leasehold interests, it is nevertheless a fact that leasehold interests in Georgia are not taxed, because the property is taxed in solido to the owner and it is not the practice to tax separately separate interests in real estate. In this case the Respondent claims (and his claim has been upheld by the Supreme Court of Georgia) that, because the State is prevented by its contract from taxing the lessor with the full value of the property, it is justified in taxing the lessee with the value of the leasehold interest. In other words, if the lessor had no charter protection in the matter of taxation, the lessee would not be

taxable with its leasehold interest; but, as the State is prevented by its own contract from taxing the lessor with the full value of the property, the lessee can be made to pay the difference. It is admitted in the record (pp. 20, 64, 84) that lessees of railroads that have no charter exemptions are not taxed on their leasehold interest. And in this case Petitioner is not taxed on its leasehold interest in the lines of the Southwestern R. R. Co. which are not covered by the charter provision as to taxes.

10. The Augusta & Savannah Railroad has been under lease to the Petitioner and its predecessor since 1862 and the Southwestern Railroad since 1869. The charter provisions as to taxation have been frequently before the Courts and it has never been thought that the taxation of the property was affected by the leases.

State vs. Augusta & Savannah R. R., 54 Ga. 401.
S. W. R. R. vs. State, 54 Ga. 401.
S. W. R. R. vs. Georgia, 92 U. S. 676.
Goldsmith vs. A. & S. R. R., 62 Ga. 468.
Goldsmith vs. S. W. R. R., 62 Ga. 498.
Wright vs. S. W. R. R., 64 Ga. 783.
Wright vs. Central, 236 U. S., 574, 580.

There has been persistent effort on the part of the State to nullify these charters. Their inviolability has been well established. Petitioner has been denied its right guaranteed to it by the Federal Constitution.

The amount involved is large. The back taxes involved aggregate over one hundred thousand dollars, and the case also concerns the taxation of the property in perpetuity.

Wherefore, Petitioner prays that the writ of certiorari may issue to the Supreme Court of Georgia that the decision of the Supreme Court of Georgia may be reviewed and re-

versed, and Petitioner further prays that if the writ is issued the copy of the record heretofore filed in response to the writ given may be taken and delivered as a sufficient return to the writ of certiorari.

ALEXANDER R. LAWTON,
T. M. CUNNINGHAM, JR.,

Attorneys for Petitioner.

Savannah, Ga., May 10, 1917.

We hereby acknowledge service of the within petition for certiorari and brief, and of notice that May 14, 1917 has been fixed as date for the submission of same. Copies of the petition and brief received.

This April 30, 1917.

JNO. C. HART,
SAMUEL H. SIBLEY,

Counsel for Respondents.

9.

FILED
JAN 6 1919
JAMES D. MAHER,
CLERK.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918

No. 163

CENTRAL OF GEORGIA RAILWAY COMPANY,
PLAINTIFF IN ERROR,

vs.

WILLIAM A. WRIGHT, COMPTROLLER GENERAL
OF THE STATE OF GEORGIA, DEFENDANT
IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR

A. R. LAWTON,
T. M. CUNNINGHAM, JR.,
For Plaintiff in Error.

Braid & Hutton, Inc., Printers, Stationers, Lithographers, Savannah, Ga.

SYNOPSIS

SYNOPSIS—Continued

TABLE OF CASES

TABLE OF CASES—Continued

SUPREME COURT OF THE UNITED STATES

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No. 163

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vs.

WILLIAM A. WRIGHT, COMPTROLLER GENERAL
OF THE STATE OF GEORGIA, DEFENDANT
IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR

STATEMENT OF THE CASE

1. The Comptroller General of the State of Georgia assessed against the Central of Georgia Railway Company back taxes for the years 1908 to 1914, both inclusive, on its leasehold interest in the Augusta & Savannah Railroad and its leasehold interest in certain portions of the Southwestern Railroad. Central of Georgia Railway Company brought a bill in equity against the Comptroller General in the Superior

Court of Fulton County, Georgia, to restrain the Comptroller from levying and collecting said taxes. The case was heard upon the pleadings and a stipulation and injunction was issued against the Comptroller General. The Comptroller General then took a writ of error to the Supreme Court of Georgia and the decision of the trial court was reversed by the Supreme Court of Georgia and the injunction was dissolved. Wright vs. Central Railway, 146 Ga. 406. Record p. 77. From this decision the Central of Georgia Railway Company has sued out a writ of error to this Court and has also applied for a writ of certiorari.

2. "Augusta & Waynesboro Rail Road" was incorporated December 31, 1838 (Acts 1838, p. 174). Its name was subsequently changed to "Augusta & Savannah Railroad," February 16, 1856 (Acts 1856, p. 185). The Thirteenth Section of the original charter provides:

> "That the said Rail Road, and the property of said Company, shall not be subject to be taxed higher than one half of one per centum on its annual income; and no city or town corporation shall have power to tax the stock of said Company, but may tax any property, real or personal, of said Company, within the jurisdiction of said city or town, in the same ratio of taxation of like property."

3. "Southwestern Railroad Company" was incorporated December 27, 1845, (Acts 1845, p. 132). The Fourteenth Section of the original charter of the Southwestern Railroad Company provides

> "That the said rail-way and its appurtenances, and all property therewith connected, shall not be subject to be taxed higher than one half of one per cent. upon its annual nett income."

4. "Muscogee Railroad Company" was incorporated December 27, 1845, (Acts 1845, p. 116). Muscogee Railroad Company constructed the line from Butler to Columbus, Georgia, being 50.85 miles in length. Under the Act of March 4, 1856, (Acts 1856, p. 187), Muscogee Railroad Company and its franchises and property were united with and merged into Southwestern Railroad Company under the charter of the Southwestern Railroad Company and all of the rights, privileges, and property of Muscogee Railroad Company became part and parcel of Southwestern Railroad Company. The Fifth Section of the charter of Muscogee Railroad Company provides

> "That the capital stock of the said Rail Road Company shall not be taxed by the State higher than one half of one per cent. upon its nett income, nor shall any other tax be levied or collected on the stock of said Company."

5. The total mileage of the lines of Southwestern Railroad Company in Georgia is 329.59. Certain of the lines, having a total mileage of 198.72 miles, which includes the line originally built by the Muscogee Railroad Company, are covered by the charter provisions as to taxation above set forth. (Wright vs. Southwestern Railroad Company, 64 Ga., 783; Southwestern Railroad Company vs. Wright, 116 U. S., 231.) These lines constitute 60.29 per cent. of the mileage of the Southwestern Railroad in Georgia, and are hereinafter designated as "Charter Tax Lines." The remaining lines of the Southwestern Railroad Company in Georgia, having a mileage of 130.87 miles, are not covered by the above recited tax provisions, but are taxable on the ad valorem basis as all other properties in Georgia are taxable. These lines are hereinafter described as "General Tax Lines."

6. May 1st, 1862, Augusta & Savannah Railroad leased its railroad and franchises to Central Railroad & Banking Company of Georgia. (Record, p. 35).

June 24, 1869, Southwestern Railroad Company leased its railroad and franchises to The Central Railroad & Banking Company of Georgia (Record, p. 39).

Act of the Legislature of Georgia January 22, 1852, (Acts 1852, p. 119) expressly authorizes two above recited leases. (See Appendix to this brief, page 57.) The Sixteenth Section of the Act incorporating Augusta & Waynesboro Rail Road (Acts 1838, p. 174) expressly authorizes it to rent or farm out its properties. (See Appendix to this brief, page 58.)

7. March 4, 1892, all of the properties and assets of the Central Railroad & Banking Company of Georgia, including its system of railroads and its leasehold interest in Augusta & Savannah Railroad and Southwestern Railroad passed into the hands of Receivers of the Circuit Court of the United States for the Southern District of Georgia. The greater part of the properties and assets of the Central Railroad & Banking Company of Georgia, including the above stated leasehold interests, were purchased by Thomas & Ryan at judicial sale. On October 17, 1895, the said purchasers and their associates were incorporated under the laws of the State of Georgia under the provisions of the Act of December 17, 1892, and the Acts amendatory thereof (Code Sections 2585 (11, 12), 2586, which are copied in the Appendix to this brief), with all the rights, powers, privileges and immunities enjoyed by the Central Railroad & Banking Company of Georgia under its original charter and amendments thereto, and with all the rights, powers, privileges and franchises conferred by the said Act of December 17, 1892, and the Acts amendatory thereof, and the said petitioners under their charter and the statutes under which they were incorporated, were substituted for the original stockholders of the Central Railroad & Banking Company of Georgia.

8. October 24, 1895, Augusta & Savannah Railroad entered into a contract with Central of Georgia Railway Com-

pany, whereby the lease of its railroad to Central Railroad & Banking Company of Georgia was modified and renewed to Central of Georgia Railway Company, the said renewed and modified lease running from November 1, 1895, for the full term of 101 years and renewable in like periods upon the same terms forever, the right to renewal being in conformity to the laws authorizing it and for the period that the corporate existence of the Lessee may be continued. (See Lease, Record, p. 44).

October 17, 1895, Southwestern Railroad Company leased its railroad to Central of Georgia Railway Company, the lease being substantially similar to the lease of the Augusta & Savannah Railroad last above recited, and being modified and renewed in the same manner as was the lease of the Augusta & Savannah Railroad. (See Lease, Record, p. 49).

Under the general railroad law under which the Central of Georgia Railway Company is incorporated, it has power to lease other railroads. (Code, Sections 2591, 2597.)

9. These are the two leasehold interests with which the Comptroller General is seeking to tax the Central of Georgia Railway Company. In this connection, it should be specially noted that in assessing the taxes on the leasehold interest in the Southwestern Railroad, the Comptroller General only demanded a return of the leasehold interest in the charter tax lines which, as above stated, comprise 60.29 per cent. of the total mileage of the leased lines of the Southwestern Railroad Company in Georgia. No return was demanded of the leasehold interest in the general tax lines which comprise 39.71 per cent. of the mileage of the leased lines of Southwestern Railroad Company in Georgia, and no return or assessment has been made of the leasehold interest in said general tax lines. In other words, for the purpose of assessing taxes against Central of Georgia Railway Company on its leasehold interest in Southwestern Railroad, the leasehold was divided up by the Comptroller General so that the leasehold

interest in the charter tax lines was taxed and the leasehold interest in the general tax lines was not taxed. Record, pp. 4, 5, 6, 27 and 28).

10. In 1911 the Comptroller General attempted to tax the fee of these leased properties to the Central of Georgia Railway Company on the theory that for all practical purposes the Lessee was the owner of the property. This question came before the Supreme Court of the United States and it was held that it was an impairment of the obligation of the contract to tax the fee against the Central of Georgia Railway Company.

> Wright vs. Central of Georgia Railway Company, 236 U. S., 674.

11. The universal practice in the State of Georgia is not to separate different interests in property and tax them separately. The practice is to tax property as a whole and leave to the parties interested the question of the distribution as among themselves. In point of fact, there are no leasehold interests taxed in Georgia separately and distinctly and in addition to the tax on the property. There are several railroad leases in Georgia which are enumerated in the stipulations (Record, p. 75), none of which are taxed. The failure to tax leasehold interests in Georgia is not accidental or sporadic, but it is intentional and universal. This leaseholder has been singled out for taxation because the leased properties are protected from ad valorem taxation by special charters. The Comptroller General concedes in his answer that if the State of Georgia could tax these two railroads ad valorem on the same basis as other property is taxed the leasehold interest would not then be taxable because the State would have received full taxes on the property. The case is not one where the taxing authorities have merely overlooked sporadically the taxing of leasehold interests; the case is one where, in point of fact, leasehold interests are not taxed at all. This leaseholder is singled out and taxed be-

cause its Lessor has a contract with the State which prevents the State from taxing the property on its value, but which remits the State to a tax of one half of one per cent. of the net income.

12. Upon this state of facts, two Federal constitutional questions are raised by the record:

First. Under the charter provisions the tax is laid on the property and a special method is provided for taxing it. The property having been taxed up to the limit according to this method is fully taxed and it impairs the obligations of the contracts contrary to the Constitution of the United States to tax the leasehold interest in the property to the Lessee.

Second. The taxation to Central of Georgia Railway Company of its leasehold interest in these railroad properties, and the uniform omission to tax, and the universal and settled practice of the taxing department of the State not to tax all other leasehold interests of all other persons, is a denial to Central of Georgia Railway Company of equal protection of the law and is a taking of its property without due process of law contrary to the Fourteenth Amendment of the Constitution of the United States.

ASSIGNMENT OF ERRORS

1. Under the Constitution of the State of Georgia all property subject to be taxed must be taxed uniformly and ad valorem and classification of property for taxation is not permitted. It is the universal and settled practice in Georgia not to tax leasehold interests in real estate, separate and apart from, and in addition to, the tax of the fee to the owner. The taxation to Central of Georgia Railway Company of its leasehold interests in the Augusta & Savannah Railroad and the Southwestern Railroad, and the uniform omission to tax, and the universal and settled practice of

the taxing department of the State not to tax all other leasehold interests of all other persons, is a denial to Central of Georgia Railway Company of the equal protection of the law and is a taking of its property without due process of law contrary to the 14th amendment of the Constitution of the United States, and the Supreme Court of Georgia erred in not so deciding and in reversing the judgment of the Court below.

2. The Supreme Court of Georgia erred in deciding that the leasehold interests of the Central of Georgia Railway Company in the Augusta & Savannah Railroad and in those portions of the Southwestern Railroad which are taxable under their charters at a rate not higher than one-half of one per cent. on their respective net incomes, were taxable in addition to the taxation of the fee and in deciding that leasehold interests in all other property were not taxable in addition to the fee. This ground of classification is arbitrary, unreasonable, and discriminatory against Central of Georgia Railway Company and is a denial of equal protection of the law and a denial of due process of law contrary to the 14th amendment of the Constitution of the United States.

3. The universal and systematic non-taxation of leasehold interests in property in the State of Georgia in addition to the taxation of the fee and the taxation of the leasehold interests of the Central of Georgia Railway Company in the Augusta & Savannah Railroad and those portions of the Southwestern Railroad which have a charter limitation as to taxes is an arbitrary and unjust classification in that the railroads of the lessors when they have paid taxes at the rate of one-half per cent. on their respective net income as required by their charters are completely and exhaustively taxed, and the fact that the lessors can not be taxed at a higher rate is no reason whatever for taxing the lessee with its leasehold interests, and the universal and systematic non-taxation of other leasehold interests in

property which has no charter limitation as to taxes is a denial of equal protection of the law and a denial of due process of law to Central of Georgia Railway Company contrary to the 14th amendment of the Constitution of the United States.

4. The Supreme Court of Georgia erred in deciding as follows:

> "The record disclosed that, prior to any call for a return of any leasehold interest, the **lessee** had returned for ad valorem taxation the entire fee in all portions of its system save such as had a charter exemption. In the case of these portions of the railroad which had a charter exemption from ad valorem taxation, no return was made by the lessee of its interest in the property and it is a tax on this interest of the lessee that is now sought to be collected. The Comptroller General assessed to the lessee the tax on that portion of its lines which has no charter exemption on the fee and the lessee had returned the fee in that portion for taxation."

The Supreme Court of Georgia was here referring to the return of the lines of the Southwestern Railroad, portions of which railroad have no charter tax limitations. The Supreme Court of Georgia erred in stating that the lessee made any return for taxation of any portion of the Southwestern Railroad. The lessee made no such return. On the contrary, the record discloses that the lessor made a return for ad valorem taxation of the entire fee of such portions of its lines as had no charter exemption. See especially paragraph 5 of the stipulation in the record.

The Supreme Court of Georgia erred in the following statement made in its decision:

> "It is urged that the taxation of the leasehold interests of these portions of the system which have a charter limitation as to the extent of the tax which may be demanded, and the omission to tax other leasehold interests in the system, is a denial of due process of law and an unjust and unequal classification of property."

The Court was here referring to the lines of the Southwestern Railroad Company. Central of Georgia Railway Company made no such contention. The Comptroller General demanded a return of the leasehold interests in the particular lines of the Southwestern Railroad Company which had a charter limitation as to taxes and intentionally omitted to demand a return of the leasehold interests in the lines of the Southwestern Railroad Company which had no charter limitation as to taxes. It was not urged that this was a denial of due process of law to Central of Georgia Railway Company. The contention was that it was illogical, and attention was called to the fact to illustrate the point that the Comptroller General was seeking to tax the leasehold interests in the charter tax lines, not because under the law leasehold interests were taxable, but because the State was estopped by its contract from taxing those lines on the ad valorem basis, and in this way the State was seeking to repudiate its contract. The point was made in the pleadings and in the argument that the taxation of the leasehold interests in the charter tax lines, and the non-taxation of the leasehold interests of all other persons in all other property, was a denial of equal protection of the law.

6. The Supreme Court of Georgia decided that the taxation of the leasehold interests of the Central of Georgia Railway Company in the Augusta & Savannah Railroad and in the lines of the Southwestern Railroad Company, which

have a charter limitation as to taxes, was not an impairment of the obligation of the tax provisions contained in the charters of said two railroad companies, or of the lease contracts, and so construed the Constitution and laws of Georgia subsequently passed as to impair the obligation of said contracts, and erred in so deciding. The tax provision of the charter of the Augusta & Savannah Railroad and the tax provision of the charter of the Southwestern Railroad Company are inviolable and irrepealable contracts of the State of Georgia and no law of the State of Georgia passed subsequent to the date of said charter can affect or impair the obligations of said charter contracts. The lease made by the Augusta & Savannah Railroad and Southwestern Railroad Company to the Central Railroad & Banking Company of Georgia, and the modifications and renewals thereof to its successor, Central of Georgia Railway Company, were made on the faith of the provisions contained in the charters of the Augusta & Savannah Railroad and the Southwestern Railroad Company with respect to taxation. The tax imposed by said charters is a tax on the railroad properties themselves, and is imposed in lieu of all other taxes on said properties, and the leasehold interests of the Central of Georgia Railway Company in said properties can not be taxed in addition to taxation of the fee without in substance and effect taxing the said properties higher than the rate of one-half of one per cent. on their net income, which is the limit of taxation prescribed by the respective charters of said companies for the taxation of said railroad properties. The Supreme Court of Georgia so applied and construed the Constitution of the State of Georgia and the laws of the State of Georgia, all of which were passed subsequent to the charter provisions for the taxation of the Augusta & Savannah Railroad and Southwestern Railroad and the Act of January 22, 1852, authorizing the leases as to impair the obligation of said charter tax provisions and the obligations of said lease contracts, contrary to Article 1, Section 10, paragraph 1 of

the Constitution of the United States which provides that no State shall pass any law impairing the obligation of contracts.

7. The Supreme Court of Georgia erred in reversing the judgment of the Court below in holding that there was no denial of equal protection of the law, or due process of law, to the Defendant in Error, contrary to the 14th amendment of the Constitution of the United States; and also erred in so construing and applying the Constitution and laws of the State of Georgia passed subsequent to the charter provisions for the taxation of the Augusta & Savannah Railroad and Southwestern Railroad Company, and the Act of January 22, 1852, of the State of Georgia authorizing the said leases as to impair the obligation of said charter tax provisions and the obligation of said lease contracts, contrary to that Article of the Constitution of the United States which provides that no State shall pass any law impairing the obligation of contracts.

8. The Supreme Court of Georgia erred in holding and deciding that the statutes of Georgia enacted subsequently to the charter tax provisions herein before recited provide for assessment of leasehold interests in these railroads for county, municipal and school district taxation, and for the apportionment of values among the different counties, municipalities and school districts, and in not holding and deciding that said statutes thus construed impair the obligation of the contracts contained in said charters, deprive Central of Georgia Railway Company of its property without due process of law, and deny to Central of Georgia Railway Company the equal protection of the laws, all in contravention of the provisions of the Constitution of the United States hereinbefore referred to.

BRIEF OF THE ARGUMENT

I.

THE STATE HAS NEVER BEFORE ATTEMPTED TO TAX THESE LEASEHOLD INTERESTS ALTHOUGH THEY HAVE BEEN IN EXISTENCE ABOUT FIFTY YEARS.

The lease of Augusta & Savannah Railroad has been in existence since 1862. The lease of Southwestern Railroad has been in existence since 1869. During all this time the leasehold interests have been considered non-taxable. The Plaintiff in Error has been Comptroller General since 1879. It never occurred to him until the year 1915 that the leasehold interests in these railroads were taxable.

The history of the litigation over the taxation of these properties shows that the idea that the leasehold interests are taxable is a new conception.

In 1874 the State of Georgia attempted to repeal the tax provisions of the charters of Augusta & Savannah Railroad and Southwestern Railroad, and to tax them on the ad valorem basis. The leases were in existence at this time. It was not even suggested that the leasehold interests might be taxed to the lessee.

> State vs. Augusta & Savannah R. R., 54 Ga. 401.
> Southwestern Railroad vs. State, 54 Ga. 401.
> The latter case being reversed in Southwestern R. R. vs. Georgia, 92 U. S. 676.

"The lease of the road to another Company by authority of the Legislature does not affect the basis of taxation. * * * * The act authoriizng the lease not

having any provision in regard to taxation, the limit in its charter was not lost or changed by the lease."

Goldsmith vs. A. & S. R. R., 62 Ga. 468 (h. n. 3).

In the case cited below the Comptroller General of the State of Georgia made the point that the lease of the Southwestern Railroad was an alienation of the railroad, and that the tax provision of the charter was thereby lost (page 496). The lower Court held (page 499): "That the partial immunity from taxation granted in the charter of the Southwestern Railroad Company, as well as to the Muscogee Railroad Company in its charter, continues unaffected by merger or lease."

Goldsmith vs. Southwestern R. R., 62 Ga. 495.

Again the State of Georgia undertook to tax the Southwestern Railroad contrary to its charter, and Wright, Comptrolled General, made the point that the Southwestern Railroad Company had no right to maintain the bill because the Central Railroad & Banking Company of Georgia had leased its road and bargained to pay the taxes (page 788). The Court sustained the bill and held that the lines of the Southwestern were taxable in accordance with the charter provisions and not otherwise.

Wright vs. Southwestern, 64 Ga. 783.

Finally in 1911 the Comptroller General attempted to tax the Central of Georgia Railway Company with these two railroad properties on the theory that the leases being perpetual the leases conveyed a base fee, and that the Central was for all practical purposes the owner of the properties, and, therefore, was liable to pay the taxes on the same. The Supreme Court of the United States repudiated this doctrine, and in the body of the decision (page 680) decided:

"We are not suggesting that the contract in the charters of the lessors passed by assignment to the lessee, nor are we implying that the property was exempted generally, into whosoever hands it might come. We are dealing only with the specific transaction permitted and encouraged by the Acts of 1838 and 1852, and saying that we cannot reconcile it with our construction of those acts to allow that transaction to change the position for the worse. We construe those statutes as making the fee exempt from other taxation than that provided for, in favor as well of the lessee as of the lessor—the protection of the lessee being necessary in order to make good that promised to the lessor."

Wright vs. Central of Georgia Railway Co., 236 U. S. 674, 680.

II.

THE PRACTICE OF THE TAXING DEPARTMENT IS PERSUASIVE AND THE LAW SHOULD BE INTERPRETED IN THE LIGHT OF THE PRACTICES AND ALL DOUBTS SHOULD BE RESOLVED IN FAVOR OF THE TAXPAYER.

"This court and all other courts will recognize the practice of co-ordinate departments of government, and allow the construction placed by the officials in such departments upon the statutes, and even the constitution, to be operative where there is room for construction. The long continued practice of the executive or the legislative department will be treated as persuasive authority by the courts, and has, in numerous cases been followed, although the individuals composing the court at the time would have doubt as to the true construction if the question was left unaffected by the construction placed upon it by another department of government."

Temple Baptist Church vs. Terminal Co., 128 Ga. 669, 680.

"That this is the way in which it has been read and interpreted by everybody who has to do with the matter of taxation in a final way since 1845, when the railroad seems to have been finished, affords strong evidence that this construction agrees with the intent of the charter."

Wright vs. Georgia R. R. & Banking Co., 216 U. S. 420, 426.

To the same effect see:

L. & N. R. R. vs. Wright, 199 Fed. 454, 459.

"To decide whether these taxes are such an unjustified exaction we must turn to the legislation of the State, bearing in mind that the practical construction given to the law for nearly a half century is strong evidence that the Plaintiff's contention is right."

Wright vs. Central of Georgia Ry. Co., 236 U. S. 674, 678.

III.

THE TAXES ARE IMPOSED BY THE CHARTERS UPON THE RAILROADS AND WHEN THE RAILROADS ARE TAXED AT THE MAXIMUM PROVIDED BY THE CHARTERS THE POWER OF THE STATE TO TAX THE RAILROADS IS EXHAUSTED.

The charters do not confer exemption from taxation. The harters lay down a specific method for taxation and fix the maximum rate of taxation.

The Augusta & Savannah Railroad and Southwestern Railroad Company made their tax returns to the State of Georgia, and the taxes on the railroads have ben paid at the maximum rate of one-half of one per cent. upon the annual net income. The properties have been fully taxed according to the contract. The proposition now is to go back for seven years and tax the property on an entirely different basis.

The taxes are not laid on the Company. The tax is laid on the railroad.

The charter of the Augusta & Waynesboro Rail Road provides: "that the said Rail Road and the property of the said Company, shall not be subject to be taxed higher than one-half of one per centum upon its annual income," etc. The word "railroad" is written in the charter "Rail Road," not "railroad."

The Southwestern Railroad charter provides:

"That the said rail-way and its appurtenances and all property therewith connected, shall not be subject to be taxed higher than one-half of one per cent. upon its annual nett income."

Here again the tax is imposed on the rail-way.

The Supreme Court of the United States has noted the fact that the tax is laid on the railroad and not on the Company or its stock.

> "The language of the exempting clause is somewhat unusual. It is not that the Company or its stock shall be taxed in a certain way and otherwise exempt, but that the 'said railway and its appurtenances, and all property therewith connected shall not be subject to be

taxed higher, etc.' This clearly means the railroad specified in the charter and none other."

Southwestern Railroad vs. Wright, 116 U. S. 231, 235.

The charter of the Muscogee Railroad Company provides:

"That the capital stock of said Rail Road Company shall not be taxed by the State higher than one-half of one per cent. upon its nett income, nor shall any other tax be levied or collected on the stock of said Company." Note the exclusive language of the last clause of the sentence.

The charter of the Georgia Railroad & Banking Company is substantially similar to the charter of the Muscogee Railroad Company, and it has been held that the words "capital stock" in the charter are synonomous with property of the corporation.

Wright vs. Georgia Railroad & Banking Co., 216 U. S., 420.

The question being in the case stated below whether the State of Georgia could impose a franchise tax on the Georgia Railroad & Banking Company, whose charter is similar to the Muscogee Railroad Company's charter, the Supreme Court of the United States held:

"This plan of tax upon net earnings is quite inconsistent with any other form of taxation, and is absolutely independent of any question as to whether the property thus taxed only upon its profits should have a less or greater value than the capital invested. A tax upon earnings is a tax which at last covers and includes, unless double taxation is intended, all property necessarily held and used to make that income, including the enjoyment of its franchises. It is not to be

presumed, in the light of the public policy of the time, that the State intended that this pioneer railroad should be subjected to any form of taxation of property which produced the taxable income. * * * We are, therefore, of opinion that this property is not subject to any other method of taxation than that of the special system stipulated for by the contract, and that the Act of the Georgia Legislature in so far as it provides for an ad valorem tax upon any part of this invested capital of the Georgia Railroad & Banking Company, does impair the obligation of the contract. * * * If we are right in construing the tax as one upon net income as a substitute for a property tax the franchise may no more be taxed than any other property appropriate to the operation of the road. When the State gave up the right to levy and collect a property tax and to take in substitution a tax upon annual net profit, it gave up the right to tax the franchise of the company as certainly as it gave up the right to tax its railroad."

Wright vs. Georgia Railroad, 216 U. S. 420, 432.

The question in the following case being whether it was a denial of equal protection of law to tax railroads for county purposes and to omit to tax railroads taxable on the income basis under their charters, the Supreme Court of Georgia said (pp. 580, 581):

"The real question is, can railroad property which is taxable only on the income system, be subjected to any further taxation, after the State has already exacted for State purposes, the full limit of taxation authorized by the Charters of the Companies owning such property? The question must, in our opinion, be answered in the negative. When a charter, which has been held by the highest court in the land to be a contract between the State and the railroad, which the

former can not impair or violate, expressly declares that the railroad's property shall not be taxed beyond a certain limit, it seems to our minds free from all doubt that the State can not for any purpose, or in any manner exceed this limit. The proposition is too plain to admit of serious argument, and we therefore pass it as satisfactorily established."

Columbus Railway vs. Wright, 89 Ga. 574, 581.

IV.

THE INCOME WHICH IS TAXABLE UNDER THE CHARTERS IS NOT THE RENTAL WHICH THE LESSOR RECEIVES, BUT IS THE NET EARNINGS FROM THE OPERATIONS OF THE PROPERTY.

It has been the uniform practice ever since the leases have been in existence for a period of about fifty years, to tax the net earnings from the operation of the properties, and the rental which the lessors receive has never been taxed.

The idea that the rental received by the lessors is the measure of the tax under the charters is an entirely new conception on the part of the Comptroller General.

The language of the Augusta & Savannah charter is that the Rail Road shall not be subject to be taxed higher that one-half of one per cent. on its annual income.

The language of the Southwestern charter is that said railway shall not be subject to be taxed higher than one-half of one per cent. upon its annual net income.

The language of the Muscogee Railroad charter is that the capital stock of said railroad company shall not be taxed higher than one-half of one per cent. upon its net income.

The Supreme Court of Georgia decided 38 years ago in the case of the Augusta & Savannah charter, which on this point is identical with the Southwestern charter, that the tax was not measured by rental, but was measured by the net earnings from the operation of the property.

> "The lease of the road to another company by authority of the legislature does not affect the basis of taxation. The income contemplated by the charter is not the annual rental, but the earnings of the road. The act authorizing the lease not having any provision in regard to taxation, the limit in the charter was not lost or changed by the lease."
>
> Goldsmith vs. Augusta & Savannah Railroad, 62 Ga. 468 (h. n. 3).

The Defendant in Error says that this decision was obiter. So it was, but the decision is correct and is in accordance with the language of the charter and the practice has always been to measure the tax by the net earnings from the operation of the property and not by the rental.

The rental basis produces less taxes than the basis of the net earnings from the operation of the property, and the State has always been content that the tax should be levied on the net earnings basis. The idea that the rental is the measure of the tax does not square either with the charter or the practice.

The plan of the Comptroller General is that he will tax the rental to the lessor. He then ascertains the net earnings from the operation of the property, deducts from this the rental paid by the lessee, and the resultant figure he capitalizes at six per cent., and thus reaches the value of the leasehold interest, and this he taxes to the lessee on its value. The record does not show the basis of the valuation of the leasehold interest, but the brief of the Defendant

in Error at page 18 states "this was the basis of valuation fixed by the arbitrators." As counsel for the Defendant in Error expressed it in his brief at page 18, thus "the property is taxed two ways but none of it taxed twice."

On April 15th, 1915, the Comptroller General wrote a letter to each one of the lessor corporations in which he acknowledged receipt of their tax returns and then said "under the decision of the Supreme Court of the United States your road owes income tax only on the rental you receive under the lease. The lessee will be called upon to pay taxes on such value as it has under the lease." (Record, pp. 5, 27.)

The decision of the Supreme Court of the United States referred to in this letter appears from the brief of the Defendant in Error, page 16, to be the decision in Wright vs. Central of Georgia Railway Company, 236 U. S. 674, in which this Court decided that it was an impairment of the charter contract to tax the fee of the railroads to the lessee. This Court did not have this question in mind, and there is nothing in the language quoted from the decision to indicate that this Court thought that the tax was measured by the rental rather than by the net earnings from the property.

Again, on August 31st, 1915, the Comptroller General wrote to the attorneys for the Augusta & Savannah Railroad and Southwestern Railroad Company as follows:

"Payment of these income taxes will be accepted without prejudice to the contention of the State in the litigation proposed. Any excess payment of income tax will, of course, be credited on whatever ad valorem taxes it is finally determined are due." (Record, p. 14.)

We do not quite understand what the Comptroller means in this letter nor do we understand what authority of law there would be for such an arrangement.

The Comptroller General has evolved a theory which is not only not in accordance with the terms of the charters but is directly contrary to the charters.

V.

THE PRESENT LEASES ARE RENEWALS AND MODIFICATIONS OF THE ORIGINAL LEASES MADE BY CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA.

The Defendant in Error takes the position in its brief that the present leases are not renewals and modifications of the original leases made to the Central Railroad & Banking Company of Georgia, but are absolutely new leases. In other words the Defendant in Error denies that there was any continuity in the transaction.

The connection between the original leases made to the Central Railroad & Banking Company of Georgia and the present leases held by the Central of Georgia Railway Company are set up in full in the petition, paragraphs 9 to 12, record pages 9 to 11, and in the stipulation, record pages 70 to 73. Thomas & Ryan purchased at judicial sale substantially the larger part of the property and assets of the Central Railroad & Banking Company of Georgia, and among the assets so purchased were the original leases of the Augusta & Savannah and Southwestern Railroads. The purchasers were then organized as purchasers at judicial sale under the statutes of the State of Georgia and acquired all the rights, privileges and franchises of the Central Railroad & Banking Company of Georgia, and became sub-

stituted for the original stockholders of the Central Railroad & Banking Company of Georgia. (See Code Sections 2585 (11), (12), 2586, which are quoted in the Appendix.)

The new leases, which are identical, recite the fact that the leasehold estate of the Central Railroad & Banking Company of Georgia passed under judicial proceedings and became vested in the Central of Georgia Railway Company, and then the leases recite as follows: "The said party of the second part having become so vested with the said leasehold estate, is desirous to renew said lease in the manner hereinafter more specifically set forth, to which modification and renewal the said Augusta & Savannah Railroad, party of the first part, has assented and agreed." The contract of lease finally concludes with the language. "It is further agreed that this new contract of lease shall operate and be taken as to the powers, duties and liabilities of the parties hereto, and in all other respects as a substitute for the original lease contract of May 1, 1862, which original contract is hereby agreed is no longer operative or in existence."

In the Defendant in Error's brief at page 8, the position is taken that the provision in the charter of the Augusta & Savannah Railroad Company permitting it "to farm or rent out" its exclusive right of transportation was not acted on in making the lease. It does not occur to us that it would make any difference whether or not the lease referred to the provision in the charter. If the charter power existed it need not be referred to in the lease. But both in the original lease of the Augusta & Savannah, and in the renewed and modified lease, the charter power of the Augusta & Savannah is **expressly** referred to. The lease of May 1, 1862, record page 35, recites as follows:

> "Whereas, also it is provided in the charter of the said Augusta & Savannah Railroad (formerly the Augusta & Waynesboro Railroad) that said Company

may rent or farm out all or any part of their exclusive right of transportation of freight or conveyance of passengers to any other Company."

In the new and modified lease the charter of the Augusta & Waynesboro (now Augusta & Savannah) is specifically referred to. See record bottom page 44 and top page 45.

The Defendant in Error in its brief at page 8 suggests that the Augusta & Savannah charter did not intend to permit a perpetual lease. There is no limitation whatever in the charter as to the term of the lease.

The Act of 1852, which is quoted in the Appendix, confers specific authority to make these leases.

The Defendant in Error in its brief on page 8, calls attention to the fact that in the petition for the charter of the Central of Georgia Railway Company the prayer was only for the powers of the Central Railroad & Banking Company and for the powers conferred under the Act of 1852, authorizing the leases of the Augusta & Savannah Railroad and Southwestern Railroad. Under the general railroad laws the Central of Georgia Railway Company could not become incorporated and invested with the powers conferred upon the Augusta & Savannah Railroad; it could only get the powers which its predecessor, the Central Railroad & Banking Company of Georgia held, and those which were conferred under the general laws for the incorporation of railroads. Under the general railroad laws (Code Sections 2591, 2597), the power to lease other railroads is expressly conferred.

The leases and the legislative authority therefor—which is full and complete—do not in any sense impair or invalidate the tax provisions of the Augusta & Savannah and

Southwestern Railroads, as the Supreme Court of the United States said:

> "We are dealing only with the specific transaction permitted and encouraged by the Acts of 1838 and 1852, and saying that we can not reconcile it with out construction of those acts to allow that transaction to change the position for the worse."

Wright vs. Central of Ga. Ry. Co., 236 U. S. 674, 680.

It has never been supposed that the leases affected the basis of taxation.

See especially decisions cited under Point I.

VI.

THE FACT THAT ADDITIONS AND BETTERMENTS HAVE BEEN PUT UPON THE PROPERTY DOES NOT AFFECT THE BASIS OF TAXATION OR RENDER THE PROPERTY TAXABLE TO THE LESSEE.

The Comptroller General states in his answer that the lessee has put large additions and betterments on the property, and his argument from this fact is that these additions and betterments, which were made by the lessee, would be entirely and unjustly screened from taxation if the State could not reach their value by taxing the lessee.

The stipulation filed in the case, paragraph 6, states that the improvements "placed upon the leased properties by petitioner are only such improvements as were necessary to meet the demands of a growing business and to properly and economically operate the line in accordance with the standards of the day and the requirements of the heavier equipment used by all standard railroads." Without these improvements the property could not earn any net income.

The State gets the benefit from these improvements by the increase in the net income which is taxable. This precise question has, however, been decided in the case of the Georgia Railroad charter.

> "Where the capital of a corporation is exempted from taxation, except as specified, the exemption continues even if the property appreciate in value; and where as in this case, it is evident that the Legislature intended that the taxation of the corporation should be measured by the income, the exemption will not be construed as limited to the then value of the property so that natural increases in value will be subject to any other method of taxation than that stipulated in the charter."
>
> Wright vs. Georgia R. R. & Banking Co., 216 U. S. 420 (h. n. 6).

> "In this case the exemption of the lessor from taxation on its road which it has leased applies to betterments and improvements made by the lessee such as the lessor would have made to meet enlarging business."
>
> Wright vs. L. & N. R. R., 236 U. S. 687 (h. n. 3).

VII.

THE TAXATION OF THE LEASEHOLD INTEREST IS AN IMPAIRMENT OF THE OBLIGATION OF THE CONTRACT CONTRARY TO THE CONSTITUTION OF THE UNITED STATES.

The charters are inviolable and irrepealable contracts with the State. This is conceded.

The Central of Georgia Railway Company holds these leases under the terms of the charter of the Augusta & Savannah Railroad and under the Act of 1852.

The subsequent Constitutional provisions and statutes of the State of Georgia under which the Comptroller General claims authority to act are set forth in the petition in extenso paragraph 28. (Record, pp. 22, 23 and 24.)

There is not involved here any transfer of the property or any change in the title. The lessors still own the property. We are not called on to argue whether the limitation in the charters would be lost or destroyed if the lessors should convey their property. We are dealing with the situation as it actually exists.

There is a long line of decisions of the Supreme Court of the United States to the effect that where a personal tax exemption has been conferred on a corporation the exemption does not pass to an assignee or transferee by a conveyance of the rights, powers, privileges, immunities and franchises of the corporation upon which the tax exemption was conferred, typical of which line of decision is:

Rochester Railway Co. vs. Rochester, 205 U. S. 236.

This Court has decided in the case of the Georgia Railroad charter, which is substantially similar to the Muscogee Railroad charter, but which is not as strong and definite as the charters of the Augusta & Savannah and Southwestern Railroad:

> "The particular features of the case in hand take it without the rule applied in Rochester Ry. vs. Rochester, 205 U. S. 236, and other kindred cases from which we have no purpose to depart."

Wright vs. L. & N. R. R., 236 U. S. 687, 690.

In the case involving the right to tax the fee of these railroads to the lessee this Court said, referring to the charter of the Augusta & Savannah Railroad:

> "The foregoing view of Section 16 would lead us to believe that no change in the matter of tax exemption was expected to follow from the admission of another carrier to partial rights, or of an individual to carry his own goods."

In the case at bar the charters provide that the railroads shall not be subject to be taxed higher than one-half of one per cent. on their net income. This tax has been imposed. The property has been exhaustively taxed. The Comptroller General now proposes, contrary to the charters, to impose another tax on the property by taxing the lessee with its leasehold interest in the property. This is finally and at last an additional tax on the property. The covenant of the State in these charters was that the properties should not be taxed higher than one-half of one per cent. on their net earnings. The Comptroller General now proposes to ascertain the net earnings of the property, deduct the rental paid by the lessee, and capitalize the remainder, and thus value the leasehold, and to tax this value to the lessee. This is in substance imposing an additional tax on the property and violates the contract. The property has already been taxed on the basis of its net earnings. The tax on the leasehold interest is a property tax. It is a tax on an interest in property, and as the property has been taxed as high as it is possible to tax it under its charter, and according to the method pointed out by its charter, it is contrary to the charter to tax it again and according to a different method.

The case of Jetton vs. University of the South, 208 U. S. 489, is distinguishable from the case at bar.

The charter of the University of the South provides (page 491) "that said University may hold and possess as much

land, etc., not to exceed 10,000 acres, one thousand of which, including buildings and other effects and property of said corporation, shall be exempt from taxation as long as said lands belong to said University."

The Court held (p. 503): "In the case before us the exemption lasts only so long as the University owns the lands, and when it conveys a certain interest in them to a third person it no longer owns that interest, which at once becomes subject to the right of the State to tax it."

Note the language of the exemption. First the University must "hold and possess" the land. The lessee held and possessed it. Then the 1,000 acres exempted did not carry all improvements, appurtenances, easements, etc., but only "buildings and **other** effects and **property of said Corporation.** Not only must the land be the property of the Corporation, but any buildings or other effects which it included must also be the property of the Corporation in order to get the benefit of the exemption. The charter provisions in the case at bar have no such limitations or specifications. It is the property itself, and therefore all interests in that property, which are given the benefit of the contract against any change that the State might thereafter make in its methods of taxing railroad property.

In the Jetton case the tax exemption was given without an express right to lease. In the case at bar the contract that the basis of taxation would never be changed was accompanied by express authority to lease.

If a leasehold interest in the railroad is taxed to the lessee unquestionably a tax is imposed on the railroad. In the case of University of the South above cited, if the exemption as to taxation had been annexed purely to the property the Court could not have decided that a taxation of the leasehold interest to the lessee was not a taxation of the property itself.

We understand, of course, that ordinarily there is no Constitutional objection to taxing property twice, and that it is perfectly competent for the State to pass a law taxing leasehold interests to lessees in addition to the tax on the property itself. But that is impossible where the charter prohibits the taxation of the property, except on a certain basis, and not higher than a certain rate. When the property has been taxed fully under the charter it can not be further taxed nor can any interest in the property remain taxable to the owner or to anyone else.

That the property is taxed when the leasehold interest in it is taxed, note the following expressions from the decisions of the Supreme Court of Georgia in deciding this case. (Wright vs. Central of Georgia Railway Company, 146 Ga. 406. Record, p. 77.)

> Page 410. "It is not necessary to go into an analysis of the leasehold interest created by this lease to determine whether the leasehold interest is to be regarded as personalty or realty. **If it be either it is property.**"

> Page 410. "A lease of the character of those under consideration is the practical equivalent of a sale of the property for a series of terms without end, **and the lessee certainly acquires an interest in the property. * * * Surely such a right creates an interest in the property.**"

> Page 410-411. "It is argued that this section only applies to cases where the interest attaches to something tangible, which may be carved out of the property, as in the case of timber, turpentine, minerals and the like, and has no application to leases of the kind we have under consideration. The language of the section is too comprehensive to admit of such a restriction unless it be conceded that a lease of land for a long period of time, renewable in perpetuity at the option of the

lessee, **is neither an interest nor claim in and to the land.** Such a concession can hardly be made when we come to consider what a valuable property right such a lease would be. Under these leases the lessee took the entire property to hold if it pleased in perpetuity, subject to an annual charge of five per cent. on the capital stock. Certainly this valuable right creates some interest or claim **in the property.**

Page 414. "The Comptroller General assessed to the lessee the tax on that portion of its land which has no charter exemption on the fee, and the lessee had returned the fee in that portion for taxation. **The leasehold interest in the Railroad so returned was taxed in taxing the entire fee.**"

The very form of the demand for the return made by the Comptroller General shows that a tax was being imposed upon the property. The demand reads as follows:

"Having omitted to return for taxation for the year 1914 as required by law, the value of your leases and lease privileges and other interests less than the fee, owned by Central of Georgia Railway Company in and concerning the railroads in your system of railways respectively known as the Augusta & Savannah Railroad, extending from Augusta, Georgia, to Millen, Georgia, and those portions of the Southwestern Railroad, extending from Macon to Americus, etc., under lease from Augusta & Savannah Railroad Company and the Southwestern Railroad Company." (Record, pages 26 and 27.)

The assessments were in the following form:

"Value of leases and lease privileges and other interests less than the fee owned by Central of Georgia

Railway Company in Augusta & Savannah Railroad, etc." (Record, page 6.)

The taxation of the rental to the lessor and the taxation of the leasehold interest to the lessee, the value of which is arrived at by capitalizing the net earnings less the rental, is a scheme evolved by the Comptroller General to fully tax the property. The Defendant in Error in its brief at page 18, says, that according to this method "the property is taxed **two ways,** but none of it is **taxed twice.**"

Note especially the cases of:

Wright vs. Georgia R. R., 216 U. S. 420, 432.
Columbus Railway vs. Wright, 89 Ga. 547, 581.

both of which cases are quoted under Point III.

In the case of Morris Canal Company vs. Baird, 239 U. S. 126,

The exemption from taxation was limited to such property "as is possessed, occupied and used by the said company for the actual and necessary purposes of said canal navigation." In view of this language the Court held that (p. 133) "after transfer to the railroad the assessed property was not possessed, occupied or used by the Canal Company, and the exemption, therefore, no longer applied," unless some legislation plainly authorized or directed its transfer.

In our case legislation expressly authorized the case.

The Morris Canal Company case (p. 132) points out the distinction for which we are here contending. The Court said: "The results in Wright vs. Central of Georgia Railway, 236 U. S. 674, and Wright vs. Louisville & Nashville Railroad Company, 236 U. S. 687, 690, were based upon the original charters, which were interpreted as

contemplating and permitting subsequent transfers without subjecting the fee to taxation."

In a settlement between the State of New Jersey and the Delaware Indians with respect to their claims to a portion of the territory of New Jersey, certain lands were purchased and set aside for the Indians, the Act providing: "The lands to be purchased for the Indians shall not thereafter be subject to any tax," Under permission of the Act of Legislature the lands purchased for the Indians were sold the latter Act saying nothing about taxes. It was held that "the privilege, though for the benefit of the Indians, is annexed by the terms which create it to the land itself; not to their persons," and that the exemption was good in the hands of the purchaser and could not be impaired.

State of New Jersey vs. Wilson, 7 Cranch, 164.

VIII.

THE LESSEE CAN MAKE THE POINT OF IMPAIRMENT OF THE CONTRACT.

The Defendant in Error contends that the lessee can not make this point because it has no contract with the State; that the contract is a personal contract between the lessors and the State.

The lessee has a direct interest in the matter. It leased a piece of property which the State by its solemn covenant with its lessor had agreed should not be taxed higher than one-half of one per cent. on its net income. The lessee took the lease on the faith of the inviolability of this contract.

In the case of Wright against Central, 236 U. S. 674 and in the case of Wright against L. & N. Railroad, 236 U. S. 687, the lessee made the point of impairment of the obligation of the contract contained in the charters of the lessors and in

both cases was successful. The lessors were not parties to those cases. In the former case the Court said (p. 680), "We construe those statutes as making the fee exempt from other taxation than that provided for, in favor as well of the lessee as of the lessor—the protection of the lessee being necessary in order to make good that promised to the lessor."

In the case of the Delaware Indians above cited the purchaser of the land made the point of impairment of the contract.

New Jersey vs. Wilson, 7 Cranch, 164, 167.

In the following case the Illinois Central was the lessee and a creditor of the railroad company whose charter was claimed to have an exemption and made the point of impairment of the contract.

Ill. Cent. R. R. vs. Adams, 180 U. S. 28, 35-36.

In the case cited below the question was raised as to whether it was an impairment of the obligation of the contract to require a railroad company to carry freight at a rate which was confiscatory. The Court said that the stockholders might make this question because the stockholders were pecuniarily interested in, equitably indeed the beneficial owner of, the property of the corporation.

Reagan vs. Farmers L. & T. Co., 154 U. S. 362, 393.

In the case cited below the plaintiff was a mortgage bondholder of the railroad company, whose property was claimed to be exempt under a charter of another railroad, to whose properties and immunities the former had succeeded. The point does not seem to have been made that the plaintiff was without an interest. His interest was assumed as a matter of course.

Bancroft vs. Wicomico Co. Coms. 121 Fed. 874.

IX.

THERE IS NOTHING IN THE CHARTER OF THE CENTRAL OF GEORGIA RAILWAY COMPANY WHICH ESTOPS IT FROM SETTING UP THE POINT OF IMPAIRMENT OF THE CONTRACT.

The Defendant in Error contends that the Central Company is estopped from making this point, because in the statute under which this Company was incorporated as a purchaser at a judicial sale (Code Section 2585-(11), it is provided:

"That nothing in this article shall be construed to reserve any exemption from taxation, either State, municipal or county, or any special rights, privileges and immunities that are not herein authorized to be granted to each and all railroads alike, in conformity with the present Constitution of Georgia."

We are not claiming anything that any other corporation, regardless of its corporate powers, might not claim, if it was in our position as lessee. Our case does not rest on any special privilege or immunity. Our contention is that we are the lessee of a piece of property which the State of Georgia has covenanted with the lessors should be taxed exhaustively by a tax of one-half of one per cent. on its net income, and that it is a violation of that contract to exceed the maximum tax agreed upon by casting the taxation of an interest in the property on the lessee.

The provision quoted from the above recited statute is merely intended to prevent any exemption from taxation which might have belonged to the Company whose property was bought at judicial sale from passing to purchasers who might organize under this section. The Central Railroad & Banking Company of Georgia had a tax limitation in its charter substantially similar to the tax provision in the charters

involved in this case. (Central R. R. vs. Georgia, 92 U. S. 665.) When the purchasers of the property and assets of the Central Railroad & Banking Company of Georgia at judicial sale incorporated under this statute the proviso above quoted prevented this immunity from taxation from passing to its successor organized under this statute. The proviso of the incorporation statute is but a reiteration of the provision of the State Constitution of 1877, which prohibits the Legislature from alienating, limiting or restraining the right of taxation. (Constitution, Article 4, Section 1, Par. 1).

The State Constitution of 1877 also provides (Code Section 6468, Art. 4, Sec. 2, Par. 6): "No provision of this Article shall be deemed, held or taken to impair the obligation of any contract heretofore made by the State of Georgia."

The Constitution was careful to preserve inviolate the obligation of contracts heretofore made.

X.

It is the settled practice of the tax authorities in Georgia not to tax leasehold interests separate from and in addition to the property itself. This leasehold alone is singled out. This is a denial of equal protection of law contrary to the Fourteenth Amendment to the Federal Constitution.

This question is distinctly made in the 25th paragraph of the petition. (Record pp. 18, 19 and 20).

This paragraph of the petition taken in connection with the answer of the Comptroller general responsive to it shows that separate interests in real estate in Georgia are not taxed separately; that the property is taxed in solido; that this is the settled practice; that the omission to tax leasehold interests separate and apart and in addition to a tax

on the property itself is not accidental or sporadic, but is the settled practice of the tax authorities in Georgia. These propositions are practically conceded.

We contended in the Supreme Court that there was no statutory authority in the State of Georgia for the taxation of leasehold interests in addition to a tax on the property. This question was found against us by the Supreme Court of Georgia, but the point still remains that although the law of Georgia provides for the taxation of leasehold interests in point of fact they are deliberately and by design not taxed in addition to the tax on the property.

As evidence of the settled policy of the taxing department of the State on this subject we call attention to the following facts:

(1) Code Section 1087 which prescribes the questions to be propounded to tax payers contains, among other questions, the following question:

> "What is the value of your leases and leased privileges or other assets of like character?"

A form of the return upon which taxes are made appears in the record next to page 54 marked Exhibit No. 14. There is no such question on the form of return.

(2) The Comptroller General issues a printed book of instructions to the Receivers of Tax Returns. (Record p. 19). This book contains elaborate instructions to Receivers of Tax Returns and contains the questions to be propounded to the tax payers, and there is no suggestion in it that leasehold interests should be taxed as such.

(3) The Comptroller General prescribes and submits the annual returns for taxation to be made to him by the railroads in this State. The form of the return appears in the

Record as Exhibit No. 15, immediately in front of page 55. There is nothing on the return which indicates that railroads are expected to return the leasehold interest which they own in other railroads.

(4) The stipulation (Record pp. 75-76) sets forth the lines of railroad in Georgia which are leased. None of these leasehold interests in railroads have been taxed to the lessees, except that the Comptroller General says that he is going to tax the lessee of the Georgia Railroad with its leasehold interest in that railroad, not because it is a leaseholder, but because the charter of the Georgia Railroad prevents the State from taxing the Georgia Railroad except at the rate of one-half of one per cent. on its net income, just as the charters of the Augusta & Savannah and Southwestern Railroad provide. This merely emphasizes the discrimination which is being practiced by the Comptroller General.

It must be remembered that these taxes which the Comptroller General is seeking to impose are back taxes. The demand for the taxes was made in the year 1915 for taxes for seven years back—1908 to 1914 both inclusive. Petitioner alleged in its petition, paragraph 25 (Record, p. 20):

> "Defendant has no intention of taxing any other such leaseholds for the year 1914 or for previous years, and has no intention of instructing the Receivers of Tax Returns in the various counties to demand returns of such leaseholds for the year 1914 and previous years, and the Receivers of Tax Returns will not demand or require such returns for 1914, and previous years."

The Comptroller General's response to this allegation was as follows (see his answer, Record p. 65):

> "The Defendant has no intention at all regarding the year 1914 as alleged, all returns for taxes for said

year so far as known to Defendant have long since been made, and the taxes paid."

The Defendant in Error in his brief, page 14, suggests "this tax payer might insist on all other tax payers being required to separate their lease interests, but could not object to the enforcement of the law as against itself. Equality of protection would be attained by enforcing the law as to every one."

The Defendant in Error proposes that we should correct the denial of equal protection of law by insisting that all other tax payers should pay their taxes on their leasehold interest. As we have shown above, the tax authorities of the State have no intention of insisting on anyone else paying taxes on leasehold interests. We are invited to attain equality of protection by forcing other people to pay their taxes.

The Supreme Court of Georgia stated the practice:

> Record, p. 84: "The Comptroller General assessed to the lessee the tax on that portion of its lines which has no charter exemption on the fee, and the lessee had returned the fee in that portion for taxation. **The leasehold interest in the railroad so returned was taxed in taxing the entire fee.** The Comptroller recognized as fair the rule that, if the whole fee was returned, the assessment on the whole fee, whether returned by the lessor or lessee, necessarily embraced the leasehold interest on the non-charter lines."

We quote the following paragraphs from the brief for the Defendant in Error.

> Page 7: "Separate returns of lease interests while required by law, are seldom required in practice and

have not been before required by the Comptroller, because leased property is usually returned **in solido** by either lessor or lessee at the value of the fee and the lease interest and reversion thus taxed together ad valorem."

Page 11.: "Property situated as this is situated; is so rare that there is hardly need to prepare special blanks or pamphlets to deal with it. The only material fact about it all is admitted; that property, all interests in which are taxable ad valorem, is permitted to be returned **in solido,** there being no substantial reason to insist on segregated returns of each interest."

Pages 14 and 15: "In the present case, since all interests are taxed ad valorem, and since the aggregate value of all interests is the value of the fee, property is ordinarily returned in fee though leased by either lessor or lessee as they may elect, the total tax paid under that return, and the lessor and lessee settle privately their proportions of it. In most cases there is an agreement as to who shall pay the taxes. There is no end to be subserved by having separate returns of each interest, and tax payers have not usually made them, nor have tax officers required them. Since no tax was lost to the State, no other tax payer has any right to complain."

XI.

The theory upon which Comptroller General and the Supreme Court of Georgia justify this discrimination.

The theory is that the State of Georgia, being precluded by its inviolable contract from taxing these railroad properties higher than one-half of one per cent. on their net earnings, is justified in singling out this lessee and taxing the lessee on this leasehold interest in the property, although at the same time it is admitted that leaseholders are not taxed

separate and in addition to the taxation of the property. In other words, this leaseholder is not being taxed because it is a leaseholder, but because it has a lease in property which the State by its solemn contract can not tax except on the income basis.

The Comptroller General in his brief at page 18 refers to the situation of the lessee as "unique." The Supreme Court in its decision, page 415, says this condition is "anomalous."

The reason which the Comptroller General and the Supreme Court give seems to us the best of reasons why the lessee should not be taxed with this leasehold interest. The State of Georgia made a contract whereby it covenanted that it would tax these railroad properties by a certain method, and not higher than one-half of one per cent. on their net earnings. Under the contract these railroad properties have paid all that is due the State of Georgia as fully and completely as any other property. Is such a distinction rational or tenable? Is it rational to say that because a lessor pays taxes on its property at the rate of one-half of one per cent. on its net income the lessee should be taxable with his lease, and that where the lessor pays taxes on the value of his property his lessee should not be taxable? The classification turns not on the difference in the quality of the leasehold interest, but on the difference in the basis on which the lessor pays taxes. It makes no difference in the kind or quality of the leasehold interest as to the manner in which the lessor pays his taxes on the leased property.

The Supreme Court of Georgia decided (Record, p. 84):

> "The Comptroller General assessed to the lessee the tax on that portion of its lines which has no charter exemption on the fee, and the lessee had returned the fee in that portion for taxation. The leasehold interests in the railroads so returned was taxed in taxing the entire fee. The Comptroller General recognized as fair

the rule that if the whole fee was returned, the assessment on the whole fee, whether returned by lessor or lessee, necessarily embraced the leasehold interest on the non-charter lines. In the matter of the leasehold interest of the lessee in the property leased from the Augusta & Savannah and the Southwestern Railroad companies a peculiar situation existed. This anomalous condition resulted from a tax limitation in the charters of these companies, limiting a tax on the fee assessable against them, which tax limitation was not repealed by the Constitution of 1877, which demanded uniform ad valorem tax upon the same class of subjects. These railroad companies, by their own act, created an interest in the property in the lessee. This interest, being a separate and distinct subject class for taxation, either the constitutional mandate must be ignored or the leasehold interest of the lessee must be assessed as was done by the Comptroller General. This action of the Comptroller General neither violated the due-process clause of the Constitution, State and Federal, nor denied the lessee the equal protection of the laws, nor violated the tax-uniformity clause of the State Constitution."

The vice in the decision of the Supreme Court is the assumption that the fee in the charter tax lines has not been assessed for taxation. When the lessor paid taxes, measured by the income, the fee was taxed. It makes no difference whether the tax on the fee is measured by income or by the value of the property.

On a former occasion the Comptroller General attempted to tax the fee of these railroads to the lessee. In deciding that case the Supreme Court of the United States said:

"We construe those statutes as making the fee exempt from other taxation than that provided for, in

favor as well of the lessee as of the lessor—the protection of the lessee being necessar yin order to make good that promised to the lessor."

Wright vs. Central of Georgia Ry. Co., 236 U. S. 674, 680.

In the case in which the Comptroller imposed a franchise tax on the Georgia Railroad & Banking Company in addition to the tax of one-half of one per cent. on its charter, the Supreme Court of the United States held:

"This plan of tax upon net earnings is quite inconsistent with any other form of taxation, and is absolutely independent of any question as to whether the property thus taxed only upon its profits should have a less or greater value which at last covers and includes, unless double taxation is intended, all property necessarily held and used to make that income, including the enjoyment of its franchises. It is not to be presumed, in the light of the public policy of the time, that the State intended that this pioneer railroad should be subjected to any form of taxation of property which produced the taxable income. * * * If we are right in construing the tax as one upon net income as a substitute for a property tax the franchise may no more be taxed than any other property appropriate to the operation of the road."

Wright vs. Georgia Railroad, 216 U. S. 420, 432.

The Supreme Court of Georgia seems to think that it is necessary to tax this leasehold interest because the Constitution of 1877 provides that all property shall be taxed, but there is no difference between this leasehold interest and any other leasehold interest in this respect.

But the Supreme Court of Georgia had already decided:

> "The Constitution does not require any property to be taxed more than once."
>
> Georgia R. R. & Banking Co. vs. Wright, 125 Ga. 589 (h. n. 2).

It was once contended that it was a denial of equal protection of law to tax railroads in Georgia for county purposes, and to omit to tax for county purposes these railroads which were taxable under the income basis. On this subject the Supreme Court of Georgia said:

> "The real question is, can railroad property which is taxable only on the income system, be subjected to any further taxation, after the State has alredy exacted for State purposes, the full limit of taxation authorized by the charters of the companies owning surh property? The question must in our opinion be answered in the negative. When a charter, which has been held by the highest court in the land to be a contract between the State and the railroad, which the former can not impair or violate, expressly declares that the railroad's property shall not be taxed beyond a certain limit, it seems to our minds free from all doubt that the State can not for any purpose, or in any manner exceed this limit. The proposition is too plain to admit of serious argument, and we therefore pass it as satisfactorily established."
>
> Columbus Railway vs. Wright, 89 Ga. 574, 581.

In working out this scheme the Comptroller General proceeds entirely without regard to the charters, but evolves a scheme which according to his views justly reaches and results in the full taxation of this railroad property. He starts out with taxing to the lessor the rentals, although, according to the contract and according to the practice of 50

years, the net earnings are taxable to the lessor and not the rentals. He disposes of the interest of the lessor in this manner and then ascertains the value of the leasehold interest by capitalizing the net earnings after deducting the rentals. Thus as his counsel say in their brief at page 18, "the property is taxed two ways but none is taxed twice."

The trouble about this scheme is that it is contrary to the charters.

The Comptroller General is consistent in one respect, which emphasizes the fact that this scheme of taxation is in substance and effect an attempt to circumvent the charters. The Southwestern Railroad in Georgia is made up of 329.59 miles. Of these lines 198.72 miles are covered by the charter limitations as to taxation. 130.87 miles are not covered by the charter limitations, but are taxable as all other railroad property is taxable in the State of Georgia. The Comptroller General when it comes to taxing the leasehold interest of the Central Railroad in the Southwestern Railroad does not tax the whole leasehold interest, but only taxes the leasehold interest in those lines which have a charter limitation as to taxes. He does not tax the leasehold interest in the lines which are taxable without any charter restrictions, because he says these latter lines pay taxes in full to the State. The lease, although it is a whole, indivisible instrument, is carved up for the purpose of this tax. This illustrates and emphasizes the point for which we are contending, that the leaseholder in this case is taxed not because it is a leaseholder, but because only in this way can the State of Georgia make this railroad property pay more taxes than are provided for by the charters.

XII.

The Supreme Court of Georgia has incorrectly stated our contention on the subject of denial of equal protection of law.

The Supreme Court of Georgia, in its decision, 146 Ga., page 414, Record p. 84, has thus stated our contention on the subject of denial of equal protection of law.

> "It is urged that the taxation of the leasehold interests of these portions of the system which have a charter limitation as to the extent of the tax which may be demanded, and the omission to tax other leasehold interests in the system, is a denial of due process of law and an unjust and unequal classification of property."

We made no such contention whatever in the case. Our contention is set up in our petition, paragraph 25, Record pages 18, 19 and 20. We did not complain that the taxation of our leasehold interests in the lines which had a charter limitation, and the non-taxation of our leasehold interests in the lines which did not have such charter limitation, was a denial of equal protection of law. This would have been a very foolish contention on our part. In other words, the Supreme Court put us in the attitude of contending that we were denied equal protection of law because we were taxed too little. We called attention to the taxation of the leasehold interest in those portions of the Southwestern Railroad which had a charter limitation as to taxes and the non-taxation of the leasehold interests in those portions which did not have a charter limitation as to taxes, to emphasize the fact that the method which the Comptroller General was pursuing was adopted merely for the purpose of taxing the charter tax lines at their full value.

We wish to call attention also to a minor inaccuracy in the decision of the Supreme Court of Georgia. The Court says, page 414:

> "The record discloses that, prior to any calling for a return for any leasehold interest, the lessee had returned for ad valorem taxation the entire fee in all portions of its system save that which had a charter exemption."

The returns of the lines which had no charter exemption were made by the lessor, not by the lessee. The stipulation, paragraph 5, Record page 74, states this matter accurately:

> "The returns of the general tax lines of the Southwestern referred to in paragraph 19 of the petition, were made in the name of the Southwestern, but prior to the special return for 1911 were sworn to by a vice-president of the petitioner. Thereafter they were sworn to by the president or vice-president of the Southwestern."

XIII.

THE CONSTITUTION OF THE STATE OF GEORGIA DOES NOT PERMIT OF CLASSIFICATION OF PROPERTY FOR TAXATION.

> "All taxation shall be uniform upon the same class of subjects, and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws * * *."—Article VII, Section 2, paragraph 1 of the Constitution of the State of Georgia (Code Section 6553).

Speaking of the uniformity clause of the present Constitution the Supreme Court of Georgia says:

> "Here property subject to be taxed, the whole of it together, and not as cut or divided into species, is treated as one subject-matter of taxation; and this immediately follows the declaration that all taxes shall be uniform upon the same class of subjects. Property subject to be taxed is treated as one single class, and the only division of it contemplated or allowable is by territorial lines, coinciding with the territorial limits of the various authorities by which the taxes upon it are levied. There can not be this rate on one species of property and that on another, though there can be different rates for different cities or villages on all taxable property whatsoever. Uniformity is not required between city and city, etc., when the levy is for municipal taxes; but it is required between every man's property and every other man's property in the same city or village. * * * Once for all, the Constitution has enumerated the two classes of property, which enumeration the legislature, the courts, and the citizen must recognize as exhaustive; property, whatever its species, is simply exempt or subject to be taxed. If exempt, it pays nothing; if subject, the amount it shall pay is measured by multiplying the fixed rate into the actual value. The result will be, in every instance, that all persons who own taxable property of equal value will pay the same amount of taxes, and all who own more than others will pay more, and all who own less will pay less."

Verdery vs. Village of Summerville, 82 Ga. 138, 140.

See also:

Georgia B. & L. Ass'n. vs. Savannah, 109 Ga. 63, 67.

XIV.

THE CLASSIFICATION ATTEMPTED BY THE COMPTROLLER GENERAL IS CONTRARY TO THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The Constitution of Georgia prohibits classification. Therefore classification is a denial of equal protection of the law and is contrary to the Fourteenth Amendment to the Constitution of the United States. While there is no iron-clad rule under the Fourteenth Amendment as to the power of the States to classify for purposes of taxation, it is nevertheless true that arbitrary and unreasonable classification is prohibited, and that it is a denial of equal protection of law to tax one person of a special class and omit to tax others of the same class.

Discrimination resulting from assessment of intangible property at 75% of its actual value by a Board of Valuation while the property of individuals and other classes of corporations is generally and systematically assessed at not more than 60% of its value is a denial of equal protection of law.

Green vs. St. Louis & Interurban R. R. Co., 244 U. S. 499.

See also:

Johnson vs. Wells Fargo & Co., 239 U. S. 234.

"There can be no arbitrary and unreasonable discrimination. But when there is a difference it need not be great or conspicuous to warrant classification."

Keeney vs. New York, 222 U. S. 525, 536.

"Under the Fourteenth Amendment, neither the State nor its municipality can confer or exercise arbitrary power in classifying for purpose of regulating, licensing or taxing."

Brādley vs. City of Richmond, 227 U. S. 477 (h. n. 2).

"The State is not bound to rigid equality by the equal protection provision of the Fourteenth Amendment: classification simply must not be exercised in clear and hostile discrimination between particular persons and classes."

Citizens Tel. Co. vs. Fuller, 229 U. S. 322 (h. n. 4).

"The individual characteristics of the owner do not furnish a basis on which to make a classification for purposes of taxation. It is the property or the business which is taxed, regardless of the qualities of the owner. A discrimination founded on the personal attributes of those engaged in the same occupation and not on the value or amount of the business is arbitrary. 'A classification must always rest upon some difference which bears a reasonable and just relation to the Act in respect to which the classification is proposed.' Connolly vs. Union Sewer Pipe Co., 184 U. S. 560."

The above citation is from the dissenting opinion of Justice Lamar in

Quong Wing vs. Kirkendall, 223 U. S. 59, 64.

H. N. 1. "Equal protection of the laws means subjection to equal laws applied alike to all in the same situation.

H. N. 2. "A Corporation is a person within the meaning of the equal protection provision of the Fourteenth Amendment.

H. N. 3. "Arbitrary selection can not be justified by calling it classification in the absence of real distinction on a substantial basis; and the classification for taxation that divides corporations doing exactly the same business with

the same kind of property into foreign and domestic is arbitrary and a denial of equal protection of the laws."

Southern Ry. vs. Greene, 216 U. S. 400.

"Fundamental of the very existence of the governmental powers of the States as is this function of taxation, it is nevertheless subject to the beneficient restriction that it shall not be so exercised as to deny to any the equal protection of the law."

Brown-Forman Co. vs. Kentucky, 217 U. S. 563.
Southwestern Oil Co. vs. Texas, 217 U. S. 114.

"But clear and hostile discrimination against particular persons and classes, especially such as are of unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject, that would include all cases. They must be decided as they arise."

Southwestern Oil Co. vs. Texas, 217 U. S. 114.

"That provision in the Constitution of the State which declares that protection to person and property shall be impartial and complete is the equivalent of a declaration that no person shall be denied equal protection of the laws." (h. n. 12.)

"The first section to the Fourteenth Amendment to the Constitution of the United States places a limitation upon all the powers of a State, including among others that of taxation." (h. n. 13.)

Georgia Railroad vs. Wright, 125 Ga. 589.

"The State Constitution is important in determining what the rights of a citizen are and whether equal protection of the law is being denied. If this be not so the result is that the Fourteenth Amendment must be regarded as failing to afford protection in respect of the most important of all property rights and the most dangerous of all powers."

Nashville, C. & St. L. Ry. vs. Taylor, 86 Fed. 168, 186.

XV.

THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES APPLIES TO THE UNEQUAL ADMINISTRATION OF THE LAW BY A STATE OFFICER.

The law applies to all leaseholds.

In this case the Comptroller General is seeking to apply the law to only one leasehold interest. The Comptroller General is making a classification which the law does not authorize.

"The facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion that, whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States. Though the law itself be fair on its face and impartial in appear-

ance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

Yick Wo vs. Hopkins, 118 U. S. 356, 373.

"The inhibition in the Fourteenth Amendment means that no agency of the State, or of the officers or agents by whom her powers are exerted, shall deny to any person within her jurisdiction the equal protection of the laws. Whoever by virtue of his public position under a State government deprives another of life, liberty, or property, without due process of law, or denies or takes away the equal protection of the laws, violates that inhibition; and as he acts in the name and for the State, and is clothed with her power, his act is her act. Otherwise, the inhibition has no meaning, and the State has clothed one of her agents with power to annul or evade it."

Expárte Virginia, 100 U. S. 339.
See also Neal vs. Delaware, 103 U. S. 370.

The Fourteenth Amendment extends to all acts of the State, whether through its legislative, its executive, or its judicial authorities.

Scott vs. McNeal, 154 U. S. 34, 45.
Dobbins vs. Los Angeles, 195 U. S. 223.
Nashville, C. & St. L. Ry. vs. Taylor, 86 Fed. 168.
Raymond vs. Chicago Traction Co., 207 U. S. 20.

"Although a taxing statute upon its face may be unobjectionable, its administration may, by the adoption of unequal methods of valuation, be illegal."

Johnson vs. Wells Fargo & Co., 239 U. S. 234.

XVI.

WRIT OF ERROR IS THE PROPER REMEDY IN THIS CASE TO REVIEW THE STATE COURT JUDGMENT.

In this case we have taken a writ of error and we have also filed a petition for a writ of certiorari. Judicial Code Section 237, as amended by the Act of September 6th, 1916, c-448, 39 Stat. 226 regualtes the method of reviewing judgments of State courts.

Writ of error "is confined to cases in which the validity of a treaty or statute of, or authority exercised under, the United States was drawn in question, and the decision was against the validity; and those in which the validity of a statute of, or an authority exercised under, a State was drawn in question, on the ground of repugnancy to the Constitution, treaties or laws of the United States, and the decision was in favor of the validity."

Ireland vs. Woods, 246 U. S. 323.

See also:

Philadelphia & Redding C. & I. Co. vs. Gilbert, 245 U. S. 162.

In the case at bar we attack certain laws of the State, and the authority exercised under them by the Comptroller General of the ground that the laws and the authority exercised by the Comptroller General impair the obligation of certain contracts. We also draw in question the administra-

tion by the Comptroller General of the laws of the State of Georgia. We claim that he is administering the laws unequally and contrary to the Constitution of the United States. In this respect the Comptroller General acts for and in behalf of the State.

In order to make assurance doubly sure after taking the writ of error we also applied seasonably for a writ of certiorari.

Respectfully submitted,

A. R. LAWTON,
T. M. CUNNINGHAM, JR.,

For Central of Georgia Railway Company.

APPENDIX

Act of JANUARY 22, 1852, p. 119.

An Act to authorize the Central Railroad and Banking Company of Georgia to lease and work such railroads as now connect, or may hereafter connect, with the Central Railroad, and to authorize the Board of Directors of such Railroad Companies as now have or may hereafter have their respective railroads connecting with the said Central Railroad to make leases thereof for a term of years, or during the continuance of their respective charters.

Section I. Be it enacted by the Senate and House of Representatives of the State of Georgia in General Assembly met, and it is hereby enacted by the authority of the same, That it shall and may be lawful for the Central Railroad and Banking Company of Georgia to lease and work for such time and on such terms as may be agreed on by the parties interested, the Augusta and Waynesboro Railroad, the Milledgeville and Gordon Railroad, the Eatonton Branch Railroad, the Southwestern Railroad, and such other railroads as now connect, or may hereafter connect with the Central Railroad, and to collect, by suit or otherwise, the fares of travel and the charges of transportation on railroads so leased.

Sec. II. And be it further enacted by the authority aforesaid, That the respective Boards of Directors of the incorporated companies owning the railroads above mentioned, or owning such other railroads as now connect or may hereafter connect with the Central Railroad, shall have power and authority so to lease to the Central Railroad and Banking Company of Georgia their respective railroads for such term of time and on such other terms as they respectively may deem best.

Sec. III. And be it further enacted by the authority aforesaid, That the locomotive engines, and other property,

and the operatives of the said Central Railroad and Banking Company of Georgia, employed on such leased railroads, shall have and enjoy the same protection as are granted to the property and operatives of the respective companies hereby authorized to grant leases to the said Central Railroad & Banking Company of Georgia.

Sec. IV. And be it further enacted by the authority aforesaid, That all laws and parts of laws militating against the Act, be, and the same are hereby repealed.

16TH SECTION OF CHARTER AUGUSTA AND WAYNESBORO RAIL ROAD (Act December 31, 1838, p. 179).

Sec. 16. And be it further enacted by the authority aforesaid, That said company shall at all times have the exclusive use of the said rail road, for the transportation or conveyance of merchandise, goods, wares and freight of every kind, and passengers, over the said rail road, so long as they see fit to use this exclusive privilege, and said company shall be authorized to charge the same rates for freight or passage as are allowed in the charter of the Georgia Rail Road and Banking Company: Provided always, that said company may, when they see fit, rent or farm out all or any part of their exclusive right of transportation of freight, or conveyance of passengers, with the privilege to any individual or individuals, or other company, and for such term as may be agreed upon. And the said company, in the exercise of their right of carriage or transportation of freight, or passengers, or the person, or company so renting from said company, the right of transportation or conveyance shall, so far as they act on the same, be regarded as common carriers," etc.

CODE, §2585 (11), (12); CODE, §2586.

Sec. 2585. (11). In case of sale of any railroad heretofore incorporated by virtue of any general or special law, or which may hereafter be incorporated by virtue of this Article, or any part thereof constructed or in course of construction, or by virtue of any trust deed, or any foreclosure of any mortgage thereon, or any judicial sale, the party or parties acquiring titles under such sales, and their associates, successors or assigns, shall have or acquire thereby, and shall exercise and enjoy thereafter the same rights, privileges, grants, franchises, immunities and advantages in or by said trust deed enumerated and conveyed, which belonged to and were enjoyed by the company making such deed or mortgage, or contracting such debt, so far as the same relate or appertain to that portion of said road or the part or line thereof mentioned or described and conveyed by said mortgage or trust deed, and no further, as fully and absolutely in all respects as said railroad company, office-holders, shareholders, and agents of such Company, might or could have had, had not such sale or purchase taken place: Provided, that nothing in this Article shall be construed to reserve any exemption from taxation, either State, municipal or county, or any special rights, privileges, and immunities that are not herein authorized to be granted to each and all railroads alike, in conformity with the present Constitution of Georgia.

(12) Such purchasers, their associates, or assigns, may organize anew by filing a petition with the Secretary of State, requesting to be substituted for the original petitioners and stockholders, with all their powers, rights, privileges, duties, and liabilities under this Article, when said new incorporators may proceed anew by electing new directors as provided by this Article, and may distribute and dispose of stock, and may conduct their business generally as provided by this Article, and such purchaser or purchasers and their associates shall thereupon be a corporation, with all the powers, privileges and franchises conferred by, and be subject to the provisions of this section. But no debt, trust deeds, mort-

gages, or other liens shall be made or created by the first railroad company, or by the purchasers, except on the terms and conditions as prescribed in Section 2583.

Sec. 2586. **Purchasers, how incorporated.** The application for incorporation by the purchaser or purchasers may be made by said purchaser or purchasers alone, or with such associates as may be desired, and the petition shall set forth only the facts showing the sale and purchase as in this section provided. If the purchasers desire any additional powers not contained in the original charter of the railroad company, but which may be obtained under this Article, the said petition shall set forth specifically what additional powers are so desired. The petition shall be verified by one of the purchasers or by his counsel. When the petition is filed as aforesaid, the Secretary of State shall examine the same and issue a certificate under the great seal of the State in the form prescribed, varied to suit the particular case. The petitioners shall pay to the Treasurer of the State a fee of fifty dollars for this service.

INDEX TO BRIEF.

CASES CITED.

No. 163

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918.

CENTRAL OF GEORGIA RAILWAY COMPANY,
Plaintiff in Error,

vs.

WILLIAM A. WRIGHT, Comptroller-General of Georgia,
Defendant in Error.

In Error from the Supreme Court of Georgia.
Certiorari on the same record.

BRIEF FOR WILLIAM A. WRIGHT.

I. STATEMENT OF THE CASE.

William A. Wright, as Comptroller-General of Georgia, required the Central of Georgia Railway Company to return for ad valorem taxes for the year 1914, and several years previous, the value of "its leases and leasehold interests, and other interests less than the fee" in certain railroads referred to as the Augusta and Savannah

Railroad and portions of the Southwestern Railroad. A return was made, under protest that the interests were not assessable, by the Central of Georgia Railway Company at a nominal valuation. This return was rejected, and the lease interests in the Augusta and Savannah Railroad assessed at $689,180; and the lease interest in the portions of the Southwestern Railroad which are in controversy was assessed at $3,806,620. An arbitration was demanded by the Central Company, and after hearing the values were by the arbitrators assessed, respectively, at $19,748 and $1,046,809 for the year 1914. Values for the other years were then agreed upon. Executions were issuing when the Central Company presented its bill for injunction in the Superior Court of Fulton County. Demurrer and answer were filed, and the case tried on the pleadings supplemented by a short stipulation of facts. The lower court granted the injunction, but the Supreme Court of Georgia reversed that decision, holding that the tax executions should proceed. A writ of error and a certiorari were then taken to this court, making in substance the following federal questions:

1. The requiring the Central Company to return and pay taxes on its lease interests, separately from the fee in the property, while not requiring the same thing of other tax payers, denied the equal protection of the laws, contrary to the 14th Amendment of the Constitution of the United States.

2. The assessment of a tax on the lease interests in these railroads impaired the obligation of the charter contracts with the original proprietors of these railroads, the Augusta and Savannah Railroad Company and the Southwestern Railroad Company.

Laying aside the questions of state law and confining the case to the federal questions for review, the leading facts are:

II. MATERIAL FACTS STATED.

1. In 1838 the Augusta and Savannah Railroad Company was chartered to build a railroad in the eastern part of Georgia, the charter providing—

"That the said railroad and the property of said company shall not be subject to be taxed higher than one-half of 1 per centum on its annual income; and no city or town corporation shall have power to tax the stock of said company, but may tax any property, real or personal, of said company within the jurisdiction of said city or town in the same ratio of taxation of like property."

This charter also contained a provision permitting said company to "rent or farm out all or any part of their exclusive right of transportation of freight or conveyance of passengers, with the privilege, to any individual or individuals or other company, and for such term as may be agreed on."

2. In 1845 the Southwestern Railroad Company was chartered, afterwards absorbing the Muscogee Railroad Company and other railroads. The Southwestern charter provided:

"That the said railway and its appurtenances and all property connected therewith shall not be subject to be taxed higher than one-half of one per cent. upon its annual net income."

The Muscogee charter provided:

"The capital stock of said railroad company shall not be taxed by the state higher than one-half of one per cent. upon its net income, nor shall any other tax be levied or collected on the stock of said company."

Neither of these charters contains any permission to rent or lease the railroads constructed thereunder. Both roads were in the southwestern portions of the state, and far removed from the Savannah and Augusta Railroad.

3. In 1852 the State Legislature passed an act entitled:

"An Act to authorize the Central Railroad and Banking Company of Georgia to lease and work such railroads as now connect or may hereafter connect with the Central Railroad, and to authorize the directors of such railroad companies as now have or may hereafter have their respective railroads connecting with the said Central Railroad to make leases thereof for a term of years or during the continuance of their respective charters."

The Augusta and Savannah Railroad Company and Southwestern Railroad Company were both named in the body of the act. Their charters are perpetual. The Act did not purport to amend any charter, nor did it require anything of any Company mentioned, but in brief terms gave the permission stated in the title. Acts, 1852, page 119.

4. The Central Railroad and Banking Company, having leased both roads, in 1892 failed, and a receiver sold its assets, including said leases, to Thomas and Ryan, who, with others, became incorporated under an Act of 1895, authorizing the incorporation of railroad companies, taking the name of the Central of Georgia Railway Company and being the present litigant.

This Company in 1895 negotiated a new lease with each of proprietary companies, each for a term of 101 years, renewable forever, whereunder the entire property and franchises of each company were turned over to the Central Company for a rental equal to five per cent. on the capital stock of each company. The leases are exhibited in the bill. Each contains a covenant that the lessee will pay all taxes assessed against the lessor or its property, and concludes with a provision as follows:

"It is further agreed that this new contract of lease shall operate and be taken as to the powers, duties and liabilities of the parties hereto, and in all other respects, as a substitute for the original lease contract of May 1, 1862, which original contract it is hereby agreed is no longer operative or in existence."

5. At the time of the incorporation of the Central of Georgia Railway Company, and at the time of the making of the leases now existent, the Constitution, and substantially the laws under which the present taxation is exacted were in force.

The Act of 1892, under which said company was incorporated, and whose provisions are a part of its charter, authorized the formation of new corporations to receive and exercise the franchises of former companies whose railroads had been sold under foreclosure: Code of 1911, Sec. 2585 (11). This provision was the foundation of the application for incorporation of the Central of Georgia Railway Co., its incorporators having purchased the railroads of the Central Railroad and Banking Company. See their petition for charter, printed Record page 73. Sec. 2585 (11), however, concludes with these words:

"Provided that nothing in this article shall be construed to reserve any exemption from taxation, either state, municipal or county, or any special rights, privileges or immunities that are not herein authorized to be granted to each and all railroads alike, in conformity to the present Constitution of Georgia."

The order of incorporation itself (printed Record, page 73, concluded with these words:

"Therefore the State of Georgia hereby grants unto the above named persons, their successors and assigns, the powers and privileges of a corporation . . . subject to Article 4 of the Constitution of the State, and all laws governing railroads companies at the date hereof, or that may hereafter become of force, either by Constitutional or statute law, or regulations of the Railroad Commission of this State, or otherwise, which govern or control the operations of railroads in this State."

Article 4 of the Constitution referred to is:

"The right of taxation is a sovereign right, inalienable, indestructible, is the life of the State, and rightfully belongs to the people in all republican governments, and neither the General Assembly, nor any nor all departments of the government established by this Constitution shall ever have the authority to irrevocably give, grant, limit or restrain this right; and all laws, grants, contracts, and all other acts whatsoever by said government or any department thereof to effect any of these purposes, shall be and are hereby declared to be null and void for every purpose whatever; and said right of taxation shall always be under the complete control of and revocable by the State, notwithstanding any gift, grant or contract whatsoever by the General Assembly."

Article 7, Sec. 2, Par. 5, also provided:

"The power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the State shall be a party."

6. From 1895 to 1911 tax returns were made in the name of the Southwestern Railroad Company, and Augusta and Savannah Railroad Company, they making income tax returns only, but the same were sworn to by an official of the Central of Georgia Railway Company, which paid the taxes. From 1911 to 1914 the returns of the Southwestern Railroad Company were sworn to by an officer of that company. The returns appeared to cover the net income of the railroads, and not the rental from them. In 1915 the Comptroller called attention of these taxpayers to the fact that they should pay income tax for 1914 only on their respective rentals, as shown in the petition.

7. The Central of Georgia Railway Company returned no interest for taxation in the railroads in question prior to 1914. For that year returns of the fee had been made in the name of some one for all the railroads operated by the Central Company, save those in dispute here. The income tax on these having been dealt with as stated above, the Central Company was required to return separately its interest in them under its leases, ultimately valued by arbitrators at $19,748 and $1,046,809.

8. Separate returns of lease interests, while required by law, are seldom required in practice, and had not been before required by the Comptroller, because leased property is usually returned in solido by either lessor or lessee, at the value of the fee, and lease interest and reversion, thus taxed together ad valorem. The Comptroller knows of no property as to which the different interests

are taxable by a different rule, as is true of the property in question, save that of the Georgia Railroad and Banking Company, as to which he is taking the same position that he takes with the property involved here. Only by separating the value of the lease from that of the reversion in property so situated can the former be taxed ad valorem at all as required by law.

III. FACTS THAT ARE IMMATERIAL.

1. The leases made to the Central Railroad and Banking Company, and the practice of taxation thereunder, are irrelevant. That company had a tax exemption in its charter similar to that of the lessors. But it and its leases ceased to be in 1895. The leases of 1895 expressly declared that the former leases no longer exist.

2. The provision in the charter of the Augusta and Savannah Railroad Company permitting it "to farm or rent out" its exclusive right of transportation, is wholly immaterial, it not being intended to permit a perpetual lease of all its property and franchises in the first place, and in the second, not **having been acted on** in making the lease in question. The fifth section of the petition for charter of the Central of Georgia Railway Company (printed Record, page 73), prayed only for the powers of the Central Railroad and Banking Company as granted by its charter, and acts amendatory thereof, and especially the Act of 1852 authorizing the lease of the Augusta and Savannah and Southwestern Railroads.

When the present lease was made, it recites as the authority for its making, not the Augusta and Savannah Railroad Company's charter provision, **but only the Act of 1852** (printed Record, page 44).

3. The litigations recited in the petition between the State of Georgia, through former Comptrollers, and the Augusta and Savannah Railroad Company and Southwestern Railroad Company, reported in 54 Ga. 401, 92 U. S. 676; 62 Ga. 468, 64 Ga. 783, are wholly irrelevant as facts, and without bearing as authority. In 1874 an Act was passed **repealing the charters** of these railroads as respects taxation, and a direct attempt made to tax ad valorem the Augusta and Savannah Railroad Company and Southwestern Railroad Company themselves. This attempt failed, and it was definitely established that the charter contracts with these companies were irrepealable, and that **these companies** could not be taxed otherwise than according to their charters. While leases were in existence at the time, the **present leases** were not in existence. While there were lessees, the lessees **were not parties**, and no question was made or could be made as to the **tax liabilities of the lessees**. The dictum in 62 Ga. 468, that the lessors owed income tax not on their rental, but on the income earned by the lessee, was obiter, as pointed out by the Supreme Court of Georgia in the present case. It was in the same dictum declared that the income to be taxed was the **gross income**, but no one has ever supposed that declaration to be sound, and net income has always been returned.

4. The omission to require a return of their lease interests by the lessees in previous years is without significance. The subject has been one of some complexity, and if that fact were of importance, a taxpayer who had for a long while omitted to make returns and so escaped taxation, might always urge an exemption thereby. That taxation has been escaped in the past is but the greater

reason why its just burden should now be cheerfully assumed.

"Mere non-user by a government of its power to tax, it matters not how long continued, can never be construed into a forfeiture of the power. The question was directly passed upon when the case was here before. As to this point, Chief Justice Bleckley said: 'Whatever the expectation of purchasers, or the unbroken practice of the city heretofore may have been, the mandate of the Constitution of 1877 is to tax all property save that expressly exempted by legislative authority, if any is taxed. That this mandate may have heretofore been disregarded is no reason why it should not be obeyed now.' "

Wells vs. Savannah, 107 Ga. at p. 5. Quoted in Wells vs. Savannah, 181 U. S. 547. And see New York vs. Board of Assessors, 199 U. S. on page 46.

The present State Constitution in the strongest terms forbids the creation of any tax exemption expressly, or by any act or omission of any department of the government:

"The right of taxation is a sovereign right, inalienable, indestructible, . . . and neither the General Assembly, nor any nor all other departments of the government established by this Constitution, shall ever have the authority to irrevocably give, grant, limit or restrain this right; and all laws, grants, contracts, and all other acts whatsoever by said government or any department thereof, to effect any of these purposes shall be null and void for every purpose whatsoever."

Constitution 1877, Art. 4, Sec. 1, Par. 1.

5. The question blanks and pamphlets of instruction sent out by the Comptroller, which are recited at length

in the petition are immaterial. There was a question-blank adapted to ordinary property, one adapted to railroad property, and one that had survived from the old days when all railroads were taxed by their income, still furnished to the Southwestern and Augusta and Savannah Railroad Companies, and to any others having that system of taxation yet. So the instruction pamphlets contained information that was considered **practically useful** to the tax officers. The contents or omissions of neither banks nor pamphlets could change the law, or the duties and obligations of taxpayers. Property situated as this is situated is so rare that there is hardly need to prepare special blanks or pamphlets to deal with it. The only material fact about it all is admitted: That property, all interests in which are taxable ad valorem, is permitted to be returned in solido, there being no substantial reason to insist on segregated returns of each interest.

IV. NO DENIAL OF EQUAL PROTECTION OF THE LAWS.

This court will take as settled by the decision of the Supreme Court of Georgia all matters of State law, and will assume that the laws of Georgia authorize the separate taxation of a lease interest, such as those involved here, and also that those laws have been followed in the assessments here, and the issuance of the tax executions thereon.

Under the 14th amendment of the Constitution of the United States great latitude exists in the framing and execution of tax laws:

"Nothing in the 14th Amendment imposes any iron-clad rule upon the States with respect to their internal taxation, or prevents them from imposing double taxation, or any other form of unequal taxation, so long as the inequality is not based on arbitrary distinctions."

St. Louis S. W. R. R. Co. vs. Arkansas, 235 U. S. 350, 368, and many cases cited.

Bells Gap R. R. Co. vs. Pennsylvania, 134 U. S. 232.

Here there is no complaint but that the tax laws of Georgia are equal and uniform, having but the simple aim that all property which is not exempt pay taxes according to its value, whether real or personal, held in fee or by less estate, by individual or corporation. A few of the laws are here quoted:

Constitution of 1877, Art. 7, Sec. 2, Par. 1:

"All taxation shall be uniform on the same class of subjects, and ad valorem on all property subject to be taxed within the territorial limit of the authority levying the tax, and shall be levied and collected under general laws."

Code of 1911, Sec. 1002: "All real and personal estate, whether owned by individuals or corporations, resident or non-resident, is liable to taxation."

Code 3617: "Realty or real estate includes all lands and the buildings thereon, and all things permanently attached to either, or **any interest therein or issuing out of or dependent thereon.**"

Code 3646: "Personalty or personal estate includes all such property as is movable in its nature; in fact, everything having value inherent in itself, or the representative of value, and not included in the definition of realty."

Code 1008: "All persons owning any mineral or timber interests or **any claim in or to land less than the fee,**

shall return the same for taxation, and pay taxes on the same as other property."

Code 1010: "All property or other thing of value subject to taxation must be given in by the taxpayers as hereinafter set forth at its fair market value, and must be taxed according to value. . ."

Code 1087: "For the purpose of having a full and correct return of the real and personal property of this State, it shall be the duty of the receiver of tax returns to present a list to each taxpayer, which shall contain the following:

(Among other questions): "What is the value of your leases, or leased privileges, or other assets of like character? . . ."

"All property of whatsoever nature, except that which the Constitution expressly declares the General Assembly has power to exempt from taxation, within the limits of the State, whether belonging to individual or corporations, is not only subject to taxation, but must be taxed, and the General Assembly has no power to declare otherwise."

Atlanta B. and L. Assn. vs. Stewart, 109 Ga. 81 (8).

"The present Constitution imperatively requires that all property of every nature whatsoever within the territorial limits of the State shall be taxed, except such as the Constitution expressly authorizes the General Assembly to exempt from taxation."

Georgia R. R. and Bkg. Co. vs. Wright, 125 Ga. 589 (1).

"The Constitution requires that taxation of property shall be ad valorem, and that when any part is taxed all

shall be taxed which is subject for the time being to the taxing power in the given locality. . . . Relative to the question of taxation it makes no substantial difference whether the estate or property of the beneficial owners be classed as realty or personalty; whatever property of either kind belongs to them is taxable ad valorem."

Wells vs. Savannah, 87 Ga. 397.

But it is urged that the Comptroller is denying an equal protection of these laws, in that the Central of Georgia Railway Company alone of taxpayers is required to pay taxes on its leases.

If, as seems apparent from the above citations, and is decided by the Supreme Court of Georgia in the present case, leaseholds may be separately assessed and taxed, this taxpayer might insist on all other taxpayers being required to separate their lease interests, but could not object to the enforcement of the law as against itself. Equality of protection would be attained by enforcing the law as to every one. But protection of law may be **equal** without being **identical**.. Substance rather than form is to be regarded. Thus it has been frequently held that to pursue different modes of reaching the value of railroad properties from those applied to other forms of property is no denial of equal protection, where the same tax is in substance exacted at last:

Columbus Southern R. R. Co. vs. Wright, 89 Ga. 574.
Columbus Southern R. R. Co. vs. Wright, 151 U. S. 470.

In the present case, since all interests are taxed ad valorem, and since the aggregate value of all interests is

the value of the fee, property is ordinarily returned in fee, though leased, by either lessor or lessee, as they may elect, the total tax paid under that return, and lessor and lessee settle privately their proportions of it. In most leases there is an agreement as to who shall pay the taxes. There is no end to be subserved by having separate returns of each interest, and taxpayers have not usually made them, nor have tax officers required them. Since no tax was lost to the State, no other taxpayer has any right to complain.

From the stipulation of facts (printed Record, page 76), it appears that the leased railroads in Georgia which have no charter exemptions, are almost, though not quite uniformly, returned for taxation in solido by the lessee, and the full ad valorem tax on the fee has been paid each year on them, both the lease interest and the reversion being thereby taxed according to value. The same is true for the railroads of the Southwestern Railroad Company, except those involved here. In these, since the interest of the proprietor company is taxed by a different rule from that of the lessee company, it is necessary that the two interests be separated, as has been done in the assessments complained of, in order to apply the Constitutional ad valorem taxation to the interest which is subject thereto. If it is not done, other taxpayers may justly complain that the law of ad valorem taxation is not being equally enforced. In making the separation as **to property so situated** (and all so situated is being treated alike) there is no want of equal protection, because "the inequality is not based on arbitrary distinctions," but on a good and necessary reason.

But it is complained that to tax this lease interest ad valorem taxes the railroad twice, since the fee therein has been fully taxed once in collecting the income tax provided in the charter, and that this produces an inequality in protection. The matter was treated somewhat loosely prior to 1914, but since the decision of this court in the case of Cent. of Ga. R. R. Co. vs. Wright, 236 U. S. 674, it has become apparent that the proprietor companies are to be taxed according to their charters on the **income they derive** from the railroads, whether they operate them wholly or partially themselves, or lease them out wholly; while, of course, lessees who acquire any interest in the property will pay taxes on their property as other citizens. This becomes evident from the view taken by this court in the majority opinion, dealing with the charter of the Augusta and Savannah Railroad Company, which permitted the renting or farming out of "the whole or any part of their exclusive right of transportation:"

"The revenue (which was to be taxed) that was to be derived from the exclusive privilege granted might be obtained by doing the whole business, by letting in others to do a share of it, or by making a lease of the whole. Any one of the three courses is permitted, one deemed as likely as the other, and so far as appears, all standing alike in the mind of the Legislature in respect of legal effect upon the grant or other rights."

236 U. S. page 678 at bottom.

Now, it is evident that if the first of the three ways were followed, the income on which the chartered company would owe taxes would be the difference between revenue and operating expenses (not the gross income as suggested, obiter, in Goldsmith's case, 62 Ga. 468). If

the second plan were followed of admitting others to do a share of the business over the rails, the income of the company would be the profit made on the business it did, plus the tolls or rentals collected from the others so admitted to the use of the track. Whether these others made or lost money would make no difference. So if the third plan be followed, of leasing the track altogether to others, the income of the company is the rental received, which again will be unaffected by the earnings or losses of the lessees. The lessors indeed could not be supposed to know the earnings and expenses of the lessees so as to make a return thereof. If the lessees earned a great profit, it would not be right to tax the lessors on it; nor if there were no profits to the lessee, would it be right for the lessors to escape taxes altogether, when they were receiving an undiminishd rental. When, therefore, by a lease for a long term of years the charter companies became possessed of a fixed income, their income tax likewise became fixed. They should return and pay tax on that alone, as indicated by the Comptroller in the Exhibits to the petition. (Printed Record, page 27.)

If this rental approximately absorbs the average profit to the lessees in operating the road, their lease interest, however long, would not be worth anything. The lessees would have no ad valorem tax to pay. The income tax of the lessor would tax the whole property. If, however, for a term of years the average profit was say double the rental, it is evident that a lease having a long term would become very valuable, because a source of great income to its owner. It would have a "market value," because it could be sold. In the present case, the lessees have improved and added to the leased property, in reliance on their long leases, which are practically perpetual, and are now making net profits slightly above

the rental in the case of the Augusta and Savannah Railroad, and greatly above the rental in the case of the Southwestern. It is evident that the value of the reversion is roughly dependent on a capitalization of the rental, and in point of fact the market value of the stock of the Augusta and Savannah and Southwestern Railroad Companies is fixed by the percentage this rental pays upon the stock. So the value of the leases is roughly proportioned to the excess above the rental which the lessees earn on them, and this was the basis of valuation by the arbitrators. The lessees can use this property and improvements indefinitely and enjoy this income, or they can sell their leases at any time to another, and pocket the price. Evidently the value so represented belongs to the lessee, whether it be kept and enjoyed or sold. The value of the whole property is dependent largely on its earning power. The value of the reversion, depending on the fixed rental, and of the lease, depending on the earning power above the rental, will aggregate the whole. If both were subject to ad valorem taxation, the result would be the same whether the property were valued and taxes paid as a whole, or the interests taxed separately. When one interest only is taxable ad valorem, and the other by the income appropriate to it, they must be dealt with separately; but collecting the tax on either interest according to the rule prescribed for it in no sense taxes the other interest. The property is taxed **two ways**, but none of it **taxed twice**

That the lessee finds himself **uniquely** situated in respect of the property is not due to inequality in the law or its enforcement, but to the **uniqueness of the property**. The law **is hindered** in its uniform operation by the **charter contract which is higher than the law.**

The lessee has produced this unique situation by acquiring an interest in property so situated. There is no

defect either in the law or the equal enforcement of the law.

V. THE OBLIGATION OF NO CONTRACT IS IMPAIRED.

1. The case of Central of Georgia R. R. Co. vs. Wright, 236 U. S.

No question made in the present case was made or decided in the former case between the parties in this court. In that litigation the effort was to assess **the fee** in the railroads to the Central of Georgia Railway Company **as owner.** That the taxability of the leasehold interests of that company was not a question before the court was strongly insisted upon by counsel representing it in their brief here. The topical headings thereof on pages 6 and 7 were:

IV.

"The Comptroller is seeking to tax the Central Company with the Augusta and Savannah and Southwestern Railroads on the theory that the Central Company is the owner of both railroads. The leasehold is not taxed, but the whole property is taxed at its full value. . . . The court below in its opinion, which is in the record, calls attention to the fact that the executions were issued and the tax levied against the Central Company as owner, and that the proceeding was not one to tax the Central Company with a leasehold in the property."

V.

"The court could not in this proceeding change the assessment from an assessment on the property itself to

an assessment on the leasehold interest, and make a valuation of the leasehold interest."

Many cases were cited tending to exclude the possibility of any consideration of the taxability of anything else than was assessed. These contentions of the Central Company make clear the meaning of the concluding sentence of the majority opinion of this court:

"The executions, as we have said, must stand or fall on the jurisdiction they disclose. They attempt to tax **the fee** as the property of the plaintiff. The injunction runs only against taxing the plaintiff as **owner.** We discuss nothing but the question before us. For the reasons we have given we are of opinion that the taxes cannot be collected on the **present executions.**. The **court cannot take the place of the taxing power.**" (Boldface ours.)

It would not be permissible for the Central Company under such contentions to win its case, and now to change its contention and insist that the taxability of the leasehold was involved and adjudicated. It would be estopped so to contend:

Davis vs. Makelee, 156 U. S. at pages 689, 690.

Howard vs. State, 115 Ga. at page 253, and citations.

Luther vs. Clay, 100 Ga. 236.

Gentry vs. Barron, 109 Ga. 172.

The matter here litigated not having been adjudicated, the former litigation is irrelevant to the present case, and the reference to it in the pleadings should have been stricken.

It is worthy of remark that the view taken by the majority opinion was one not argued at the bar nor mentioned in the brief of either side. It is based on the provision of the charter contract of the Augusta and Savannah Railroad Company, which permitted the renting and farming of the franchise, the argument being that when, in the same contract, a tax on income was provided, and a method of raising the income pointed out, the tax would not cease or be superseded by raising an income in the manner contemplated in the contract. Now the charters of the Southwestern Railroad Company and of the Muscogee Railroad Company neither one permits any farming or leasing of the franchise, so that what was said really has little application to these railroads, which constitute the bulk of the present contention. The lease of the Augusta and Savannah Railroad is valued at a very nominal sum. The present case should rightly be considered with little reference to the charter of the Augusta and Savannah Company. The argument that follows will be based on the charters of the Southwestern and Muscogee companies, and of the Central of Ga. R. R. Co., and the lease made by the first to the last named.

2. NO IMPAIRMENT OF LEASE CONTRACT.

The lease of 1895 is by its very terms a substitute for the former lease, which was purchased by Thomas and Ryan, and that former lease is declared no longer to exist.

The present lease, dated in 1895, recites no authority whatever for its making, save the Act of 1852 and 1892. The Southwestern Company and Muscogee Companies had no charter authority to make a lease. The permission of the Act of 1852 was treated as still open for action by the lessor companies, and the right to take the lease which was given the Central Railroad and Banking Company

was passed on to the new Central Company by its charter and the law under which it was granted. Whatever might have been true of a lease **executed in 1852** in pursuance of the Act of 1852, when the permission of the State to make the lease lies over till 1895, and **is then** acted on, in the making of a new lease, the State's permission must be taken as qualified by its organic law then in existence. Its then Constitution emphatically forbade the existence of tax exemptions. If **the Act of 1852 had expressly offered** tax exemption or tax limitation to the lessee, the offer would have been withdrawn by the Constitution of 1877. Such an offer by the State must be viewed in the light of the Constitution and laws at the date of the action upon the offer:

Central R. R. and Bkg. Co. vs. Georgia, 54 Ga. 402 (3).

"A state statute cannot be said constitutionally to impair the obligation of contracts made subsequently to its enactment."

C. B. and Q. R. R. Co. vs. Cram, 228 U. S. 70.

The Act of 1892 authorizing the incorporation of railroads authorized generally the leasing of them. Harking back to the Act of 1852 was unnecessary, and we think unavailing so far as concerns the present contention.

3. THE ACT OF 1852 NOT AN IMPAIRED CONTRACT.

If the present litigant had acted on the Act of 1852 immediately after its passage, or if the old lease to the Central R. R. and Bkg. Co. be considered of force, no contract with the State on the subject of taxation can be deduced from the Act of 1852. It was not a charter, such

as has often been held to be a contract. No pa[men]tioned in it bound itself in anywise to the State t[any]thing. Indeed, the State **promised** nothing in i[here] is no allusion whatever to the subject of taxatio[here] is a bare permission to the Central Company t[uire] an interest in the railroads mentioned by lease f[term] of years, or during the continuance of the charte[f the] companies. The State promised nothing as to t[axa]tion of the interest acquired.

A promise of immunity or limited taxation m[after] the corporators involved have entered upon the[nter]prise is revocable. (We have seen it was unl[l in] 1895.)

Seton Hall College vs. South Orange, 242 U[100].

Such a promise in any case must be expres[d in] plain terms. It cannot arise from inference. A [bt as] to its existence is fatal to the claim:

Phenix Ins. Co. vs. Tennessee, 161 U. S. 174.

Southwestern R. R. vs. Wright, 116 U. S. 231

Bank of Commerce vs. Tennessee, 161 U. S. 134[46].

Yazoo and Miss. V. R. R. vs. Adams, 180 U. S[, 22].

Mayor of Macon vs. Cent. R. R. 50 Ga. 620.

Nothing can be found in this Act which pret[ds to] say what the State will do as to taxing the inter[st ac]quired by a lessee under it. If his interest is tax[le by] law, there is no contract to the contrary apparent[this] Act. Even permissions to acquire—not merely lease

interest in property, but the entire property of an owner having a tax immunity, **with all its rights and franchises** —will not be construed as a contract to pass the tax immunity with the property:

Rochester vs. Rochester, 205 U. S. 236.

These principles are ruled applicable to the case where the property is leased instead of sold, under legislative sanction.

Morris Canal Co. vs. Baird, 239 U. S. 126.

4. THE CHARTERS OF SOUTHWESTERN AND MUSCOGEE COMPANIES NOT IMPAIRED.

There remain but the original charters to be considered. These are valid contracts with the State, and do relate to taxation explicitly, but are not impaired by the exaction of the taxes here claimed.

Inasmuch as the Central Company is by contract bound to pay the charter tax of the Southwestern Company, it may doubtless be heard, though not a party to the charter contract.

It will have been seen that the Comptroller in the present litigation recognizes the Southwestern Railroad Company as the owner of the reversion in these railroads, recognizes that it receives a net income from the roads in its annual rentals, and that under its charter it should pay its contracted income tax. He contends that it **owes less** than it offers to pay, as represented by the Central Company. Here is no impairment.

But it is said that in seeking to make subject to ad valorem taxation the **leasehold interest** granted out by the Southwestern Company, with the improvements thereon, the **value for lease** of the property is diminished, an interest in the property is taxed otherwise than as provided by the charter, and the charter impaired.

These matters were all considered and adjudicated in the case of

Jetton vs. University of the South, 208 U. S. 489.

There, as here, the lands were not taxable ad valorem. After leases thereof it was attempted to tax them in fee to the lessee, but the University vindicated itself against the attempt: (University of the South vs. Skidmore, 87 Tenn. 155.) **New legislation** was then enacted to tax the lease interest (it already existed in Georgia), and the lease interests and improvements were held taxable to the lesses. The court said, among other things:

Page 500: "As long as different interests may exist in the same land, we think it plain that an exemption granted to the owner of the land in fee does not extend to an exemption from taxation of an interest in the same land granted by the owner in fee to another person as lessee for a term of years. The two interests are totally distinct, and the exemption from taxation of one plainly does not thereby exempt the other. The fact that at the time the exemption was granted to the owner of the fee the State had not provided for taxation against the lessee in his own name is not important. . . . The contract of exemption did not imply in the most remote degree that the State would not thereafter, through its Legislature, so change its mode of assessment as to reach the interest of the lessee directly, and not through the owner of the fee.

In so doing the State does not tax the owner of the fee, nor the fee itself. It taxes what it has a right to tax, a separate and distinct interest in the land, although the fee be in the University which can not be taxed therefor. . . ."

Page 501: "This is not a tax on the rents or income from real estate. The University receives the rents or income free from any tax. The tax is both in form and subsistance upon a separate interest in real estate granted by the lessor, and is assessed against the owner of such separate interest."

Page 503: "What is the exact interest of the lessee in the land leased to him is not necessary here to determine. It is plain that he has some interest in it, and that interest is distinct from the fee, and may be taxed when the fee is exempt from taxation. See cases to that effect in the margin."

That the Jetton case involved a total exemption from taxation, and the case at bar involves a contract for limited taxation does not distinguish them in principle. Had the University of the South been subject only to a limited tax on income, the court would have said: "The University receives the rents or income free from any save the contracted tax." The principle at the bottom of the cases is that the contract made by the State in the charter of a corporation is a contract **personal** to that corporation, and does not run with its property, or any interest that may be granted in the property to another. For any other person to have any benefit from the contract, the State must consent thereto in express and unambiguous terms—that is, make another contract about it.

"Although the obligations of such a contract are protected by the Federal Constitution from impairment by

the State, the contract itself is not property which can be transferred by the owner, **being personal to him** with whom it was made, **it is incapable of assignment.** The person with whom the contract is made by the State may continue to enjoy its benefits unmolested, but there his rights end. He cannot by **any form of conveyance** transmit the contract **or its benefits** to a successor."

Rochester vs. Rochester, 205 U. S. 247.

"This act merely permitted the lease of 'the canal of said company or any part thereof, with all or any of its boats, property, works, appurtenances and franchises,' and as clearly pointed out in the Rochester case, an exemption from taxation does not pass under a valid lease or sale of corporate property together with appurtenances and franchises."

Morris Canal Co. vs. Baird, 239 U. S. at page 133.

The only case in which an exemption or limited taxation runs with the land is where the lands are granted by the State, and the covenant runs with the land as a part of the tenure.

Great Northern case, 216 U. S. at pages 232, 233.

In the Great Northern case a contract for limited taxation instead of complete exemption was involved, and was held non-assignable:

See 216 U. S. at page 206.

All exemptions from the exercise of the **general power of taxation** are governed by the same rules, whether a total or partial restraint of that power is involved. In either case the sovereign right of taxation collides with a

contract protected by the Federal Constitution, and the rules regulating the collision are the same.

"It (the taxing power) may be **restrained by contract,** in special cases for the public good where such contracts are not forbidden. But there is no presumption in its favor. Every doubt should be resolved against it. Where it exists it should be rigidly scrutinized and never permitted to extend in scope or duration beyond what the terms of the concession clearly require."

Tucker vs. Ferguson, 22 Wall. 575.

In Rochester vs. Rochester, 205 U. S. 247, the broad expression used in the discussion is, not **exemption from taxation, but "immunity** from **exercise of governmental power."**

So in Morris Canal Bank Case, 239 U. S. 132, the expression used is "Freedom from the exercise of governmental power."

In Stearns vs. Minnesota, 179 U. S. 255, Justice White clearly states the gist of the matter to consist in **any restraint** of the power of taxation by contract.

Nor is the Jetton case distinguishable in that the exemption was stated to be for "so long as the lands belong to the University." For it had just been held, University of the South vs. Skidmore, 87 Tenn. 155, that the lands still belonged to the University, notwithstanding the leases, and the exemption was held to be of force so far as the University was concerned. Moreover, under the principles just discussed, whereby all contracts for total or partial exemption, are personal and untransferable, the contracts apply in all cases to the property only so

long as it belongs to the person having the contract, just as though it had been so expressed in all the contracts.

The idea that the owner of property in leasing it is interested in screening it from general taxation was also met in the Jetton case thus:

"If the University could lease its lands and also provide effectually that the interest of the lessees should be exempt from taxation, it may be readily seen that the amount of rental which it would receive would be larger than if no such exemption could be obtained, but that is a matter which is wholly immaterial upon the question of impairment of the contract of exemption that was really made. That contract cannot be extended simply because as so construed it would add to the value of the exemption. The language used does not include the exemption claimed." Page 501.

The Southwestern Railroad Company, to sum the matter up, is taxed according to its contract in paying one-half of one per cent. on its actual income. It is making no complaint that its charter contract is not being observed. That charter contained no language either permitting a lease of the road, or promising that a lessee should have any protection from taxation. In 1852 permission to lease was given, but without anything resembling a promise that the lessee should not be taxed if his separate interest became valuable. This permission was acted on by the present litigant only in 1895, after the Constitution and laws of the State had most emphatically announced a policy of equal ad valorem taxation upon all sorts of property and all interests therein. The present litigant of all others is estopped by the charter of its birth to claim any exemption from this taxation.

VI. CENTRAL OF GEORGIA RAILROAD COMPANY ESTOPPED TO CLAIM EXEMPTION.

The Central Company exists only by permission of the State. It received the right to own and operate any railroad at all, and the special right to succeed to the franchises of the old Central Company, and to act on the Act of 1852 in leasing the Southwestern and Augusta and Savannah Railroad from the State in 1895, and upon the terms stated in its charter and the then existent laws. By the then Constitution, the Legislature could not create a corporation with special exemptions from taxation. And the Act permitting this corporation to exercise the rights and franchises of its predecessors expressly provided, as a condition thereof:

"Provided that nothing in this article shall be construed to reserve any exemption from taxation, either state, municipal or county, or any special rights, privileges or immunities that are not herein authorized to be granted to each and all railroads alike, in conformity to the present Constitution of Georgia."

Act 1892, codified Code 1911, Sec. 2585 (11).

And the very charter granted the plaintiff by the State expressly referred to Article 4 of the Constitution on this matter of taxation.

If charters are contracts with the State, this corporation by this contract bound itself not to claim any special exemptions and immunities in exercising the franchises of its predecessors which it was authorized to succeed to. The courts should as carefully hold it to its contract as the State is held to its. After obtaining franchises on

condition it should be estopped to violate the condition, no matter what might have been its rights otherwise, or what the rights of its predecessor, Central Railroad and Bkg. Co.

"The authorities are numerous and conclusive, that no corporation can receive by transfer from another an exemption from taxation or governmental regulation, **which is inconsistent with its own charter**, or with **the Constitution and laws of the State then applicable**; and this is true even though under legislative authority the exemption is transferred by words which clearly include it."

Rochester vs. Rochester, 205 U. S., page 247.

Under the law of the sentence quoted the plaintiff cannot succeed in this contention.

Respectfully submitted,

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CENTRAL OF GEORGIA RAILWAY COMPANY *v.* WRIGHT, COMPTROLLER GENERAL OF THE STATE OF GEORGIA.

ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

No. 163. Argued January 21, 1919.—Decided February 3, 1919.

The same reasons which led this court to decide that the tax exemptions in the special charters of the Augusta & Savannah and the Southwestern Railroads inured to the Central of Georgia Railway as their lessee and precluded taxing the latter upon the fee of the leased property (*Wright* v. *Central of Georgia Ry. Co.*, 236 U. S. 674),

invalidate an attempt to evade the charter contracts by a tax of the leasehold interests.

Contracts in special charters creating perpetual tax exemptions are not revocable by later provisions of the state constitution.

146 Georgia, 406, reversed.

THE case is stated in the opinion.

Mr. T. M. Cunningham, Jr., and *Mr. A. R. Lawton* for plaintiff in error.

Mr. Samuel H. Sibley, with whom *Mr. John C. Hart* was on the brief, for defendant in error.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a bill in equity brought by the Railway Company to prevent the collection of certain taxes, which, it is alleged, would be contrary to Article I, § 10, and to the Fourteenth Amendment of the Constitution of the United States. The case was heard on bill, demurrer and answer and certain agreed facts, and the Court of first instance issued an injunction as prayed. The decree was reversed however by the Supreme Court of Georgia and a writ of error was taken out to bring the case here. It presents another attempt to accomplish, by a change in form, what in *Wright* v. *Central of Georgia Ry. Co.*, 236 U. S. 674, was held to be an unconstitutional result.

In that decision it was explained how the Central of Georgia Railway Company had become the holder of leases from the Augusta and Savannah and the Southwestern Railroad of property which by the charters of the lessors was to be taxed only in a certain way and to a certain amount. An attempt had been made to tax the lessee for the property, the leases being for one hundred and one years, renewable in like periods upon the same terms forever. The tax was laid upon the real estate, road

bed, and franchise value, (with a certain deduction), of the two lessors. It was held that the statutes made the fee exempt from other taxation than that provided for, in favor as well of the lessee as of the lessor. The taxes now attempted to be levied are upon the leasehold interests of the lessee in the same roads and it is argued that, if the leases produce a profit in excess of the rental, the value is required to be taxed by the constitution of the State. But the constitution was subsequent to the charters that created the exemption and must yield to them if they apply to the present attempt. We are of opinion that although the decision in the former case necessarily was confined to the question before the Court, the reasoning applies with equal force to that now before us. The cases of *Rochester Ry. Co.* v. *Rochester*, 205 U. S. 236, and *Jetton* v. *University of the South*, 208 U. S. 489, were urged as opposed to the conclusion reached but were thought not to control in view of the exceptional facts and language that had to be considered, as was recognized in *Morris Canal & Banking Co.* v. *Baird*, 239 U. S. 126, 132. We must follow the precedent that was established after full discussion and with recognition of the difficulties involved.

The charter contracts in question are of a kind that goes back to the time when railroads were barely beginning and that would not be likely to be repeated, but of course will be carried out by the State according to what was meant when they were made.

Decree reversed.